

Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114673718>

CA20N
Xc16
-G23

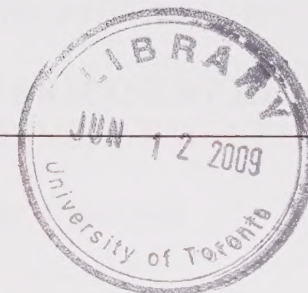
60

Government
Publications

G-31



ISSN 1180-5218



G-31

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Monday 1 June 2009

Journal des débats (Hansard)

Lundi 1^{er} juin 2009

Standing Committee on General Government

Toxics Reduction Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 sur la réduction
des toxiques

Chair: David Orazietti
Clerk: Trevor Day

Président : David Orazietti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

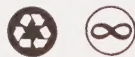
Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENT

Monday 1 June 2009

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALESLundi 1^{er} juin 2009*The committee met at 1411 in committee room 1.*TOXICS REDUCTION ACT, 2009
LOI DE 2009 SUR LA RÉDUCTION
DES TOXIQUES

Consideration of Bill 167, An Act to promote reductions in the use and creation of toxic substances and to amend other Acts / Projet de loi 167, Loi visant à promouvoir une réduction de l'utilisation et de la création de substances toxiques et à modifier d'autres lois.

The Vice-Chair (Mr. Jim Brownell): Ladies and gentlemen, I would like to call this clause-by-clause consideration of Bill 167 to order.

As per the report of the subcommittee, section 12, each party has an opportunity to make opening remarks if they wish. Mr. Barrett.

Mr. Toby Barrett: As we commence discussion of amendments to Bill 167, the Toxics Reduction Act, I would hope that during the course of this afternoon we are successful in bringing forward amendments to this bill to perhaps take away from the duplicative nature of this legislation vis-à-vis the federal government and the paperwork-driven, process-driven nature of this legislation. It's very important to try to come up with some legislation that gets results, that is workable and that is a made-in-Ontario version, recognizing that we should not be duplicating what is already in place in Ottawa.

I am concerned. There hasn't been much time for deliberations on this legislation. I hope this isn't being rammed through, or being rammed through on the basis of emotion rather than science. It's very important to have legislation that recognizes the risk involved in the emissions of some of these substances.

Time and time again we heard from a wide variety of deputants, certainly from the manufacturing sector, the mining sector, the Canadian Cancer Society, public health, Environmental Defence and other groups, and I think we should be cognizant of the fact that since these ideas were first proposed during the last provincial election, Ontario is now in the midst of a recession.

In looking through some of the government amendments, I would assume that there would have been recognition of suggestions made by the cancer society, for example. I know they were calling for targets to reduce the release of toxic chemicals, and I don't think the gov-

ernment has listened to that particular call. The targets that are mentioned do not address the issue of release.

Environmental Defence contacted me—they would have contacted perhaps a number of people on this committee—about their request for inclusion of sewage treatment plants within the regulation. Now, if I recall, maybe the NDP are covering off on some of that, but it sounds like the government is not putting forward anything with respect to that. Ever bearing in mind that there's something like 12,000 industrial, commercial and institutional facilities that do dump a certain amount of toxics into our water supply and many municipalities do not have sewage bylaws—I just use that as an example. We did not address that one; I was assuming that would have been picked up by the government.

I do commend not only the deputants; we have something like 61 or 62 amendments here, many amendments from the NDP. I'm looking forward to discussion there with respect to the merits of the precautionary principle versus a risk-based approach. It will be interesting to see where the government lies on that.

There are my preliminary comments, Chair.

The Vice-Chair (Mr. Jim Brownell): Any further opening comments?

We will move to section 1: An NDP motion, page 1.

Mr. Peter Tabuns: I move that section 1 of the bill be amended by striking out "and" at the end of clause (a), adding "and" at the end of clause (b) and adding the following clause:

"(c) to apply the precautionary principle and promote sustainable development in carrying out the purposes set out in clauses (a) and (b)."

This endorse the principles of the Canadian Environmental Protection Act and it reflects the call of the expert panel for a precautionary approach.

The Vice-Chair (Mr. Jim Brownell): Any comments? Mr. Flynn.

Mr. Kevin Daniel Flynn: We agree with the intent of this, certainly. We think that it's already been covered off. This motion is unnecessary, as much as we agree with the sentiments. The bill itself was developed in accordance with the ministry's statement of environmental values, which dictated and required that the ministry take a precautionary approach in the development of the bill itself.

The Vice-Chair (Mr. Jim Brownell): Any further comments? Mr. Barrett.

Mr. Toby Barrett: Well, here's the phrase "precautionary principle" and also the other phrase, "sustainable development." We do know, as well, over the past several years, and this comes from Gord Miller, the Environmental Commissioner, that it's important to not only talk about sustainable development, it's important to also talk about developing sustainability.

I understand the jury's out on just what is meant by "precautionary principle." There's one widely accepted definition of "precautionary principle" coming from the June 1992 conference, the Rio Declaration on Environment and Development. I think there's a definition somewhere further in your amendments, but the one I go by is the one from Rio: "In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." That was principle 15 of the declaration of the Rio conference.

1420

The Vice-Chair (Mr. Jim Brownell): Mr. Tabuns?

Mr. Peter Tabuns: I have nothing further to say.

The Vice-Chair (Mr. Jim Brownell): Okay. You've heard the motion. All in favour? Opposed? The motion is lost.

That's the only amendment in there. Shall section 1 carry? All in favour? Opposed? Carried.

We move to section 2. We have an NDP motion, page 2.

Mr. Peter Tabuns: I move that the definition of "toxic substance" in section 2 of the bill be struck out and the following substituted:

"'toxic substance' means,

"(a) any substance identified in the National Pollutant Release Inventory issued from time to time under the authority of the Canadian Environmental Protection Act, 1999,

"(b) any substance identified as a high hazard substance pursuant to the chemicals management plan under the authority of the Canadian Environmental Protection Act, 1999,

"(c) any substance capable of causing cancer to humans, or probably capable of causing cancer to humans, and identified as such in monographs issued from time to time by the International Agency for Research on Cancer,

"(d) any substance capable of causing cancer or reproductive toxicity and identified as such from time to time by the California Environmental Protection Agency under the authority of the Safe Drinking Water and Toxic Enforcement Act of 1986 (California), and

"(e) any substance known to be capable of causing cancer in humans and identified as such in the Report on Carcinogens issued from time to time by the national toxicology program, United States Department of Health and Human Services;"

Very simply, this act doesn't have a definition. It was to be left to regulations, and I believe, frankly, that both industry and the public deserve to know in legislation

what's toxic and what isn't. That came up regularly in the course of the presentations made to this committee. I think it gives certainty to those who are actually doing the work that has to be done. Frankly, the expert panel that was appointed by the government called for a list substantially the same as I have incorporated into this amendment.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Toby Barrett: I certainly agree with the latter comment. Very clearly, this legislation, as Mr. Tabuns has pointed out, does not define the basis for what a toxic substance is, and that is something that we feel is very important. We understand that it leaves the definition to the regulatory stage. A definition is important in the sense that the federal approach does define what a toxic substance is, and it just raises the issue of to what extent this legislation is going to work hand in glove with our national definition.

I know when Mr. Tabuns talks about a toxic substance, he refers to it as any substance identified in the NPRI, the National Pollutant Release Inventory. I'm concerned because that's kind of mixing the term "pollutant" with the term "toxic." You're mixing the concept of pollution with the concept of toxicity, and it's kind of one or the other.

If I could go on, in clauses (c), (d) and (e) with respect to causing cancer, again it's important to think of dosage, exposure or time of exposure. The federal approach does take a look at that kind of risk. It takes a look at the inherent hazards of a substance, including exposure rate. It's a little more specific than this.

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: We won't be supporting this. The motion is going to have the effect of actually eliminating what we've just been out consulting on with the public and stakeholders, and that is the phased-in approach that tries to bring some balance to what we think is going to be a very, very progressive piece of legislation if it is adopted.

The substances and the timelines that aren't prescribed in the bill to date will be set out in the regulations. We've promised, as a result of this, to go into a period of consultation with the public, stakeholders and industry.

We used a science-based approach when we prepared the proposed list. That process evaluated the relative risk and the hazard and already is drawing on the expertise of the toxics reduction scientific expert panel as well as Cancer Care Ontario.

We believe that the legislation as it's written includes provisions for the collection of information on substances of concern so that the government will be able to determine if additional substances that aren't currently included in the NPRI need to be added to the list of toxic substances. The bill gives you the ability to amend the list.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

To this motion, page 2, all those in favour? Opposed? The motion is lost.

We have a PC motion on page 3R.

Mr. Toby Barrett: This is also section 2 of the bill.

The Vice-Chair (Mr. Jim Brownell): Section 2, yes.

Mr. Toby Barrett: I move that the definition of “toxic substance” in section 2 of the bill be struck out and the following substituted:

“‘toxic substance’ means, subject to subsection (2), a substance, other than a metal or alloy,

“(a) that is identified as a toxic substance in schedule 1 of the Canadian Environmental Protection Act, 1999 or that has been determined to be a toxic substance—”

Interjection.

Mr. Toby Barrett: Shall I start at the beginning?

The Vice-Chair (Mr. Jim Brownell): Yes, I would say start at the beginning.

Mr. Toby Barrett: I think a lawyer had taken a couple of words out.

I move that the definition of “toxic substance” in section 2 of the bill be struck out and the following substituted:

“‘toxic substance’ means a substance, other than a metal or alloy,

“(a) that is identified as a toxic substance in schedule 1 of the Canadian Environmental Protection Act, 1999 or that has been determined to be a toxic substance through the application of a process equivalent to the chemicals management plan under the authority of that act, and

“(b) prescribed by the regulations as a toxic substance;”

The Vice-Chair (Mr. Jim Brownell): Comments?

Mr. Toby Barrett: By way of comment, again, I will mention first of all the phrase “other than a metal or alloy.” Members will recall that was stressed, certainly by the Ontario Mining Association. Some of that work was also done—I think we received a research memo with respect to the Massachusetts approach.

I think that what’s important here is that through the federal government’s chemicals management plan, we already have one of the most stringent processes in the world for assessing which substances should be considered as toxic. Again, just to reiterate, we feel we should go with the federal definition.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Thank you, Mr. Chair. We will not be supporting this, although we did certainly enjoy and listen to the presentation that was made by the mining industry last week. We think they made some very, very good points.

1430

Some metals are of concern to human health and the environment. That’s why they are included on the NPRI inventory, and they’re proposed to also be subject to the requirements of this bill. What we’re proposing to do is to define “toxic substance” in regulations, and that’s going to be done in a consultative method that involves the mining industry itself.

We used a science-based approach that evaluated, as I said, the relative risk and the hazard. We’ve drawn on the

expertise of the scientific expert panel and Cancer Care Ontario, and the priority toxics that we have already include the following: those that are designated as a high hazard in other jurisdictions, that have high exposure in Ontario, high human health impacts, high environmental health impacts and/or known or probable carcinogenicity.

So we think that the proposed route we’re taking that is going to include consultation with stakeholders, including those involved in the metals and the mining industry, is the right way to go.

The Vice-Chair (Mr. Jim Brownell): Thank you. Any further debate?

You’ve heard the motion. All in favour? Opposed? The motion is lost.

Okay, next we have section 2, page 4: a PC motion, Mr. Barrett.

Mr. Toby Barrett: Section 2: I hope this one is still there.

I move that the definition of “substance of concern” in section 2 of the bill be struck out.

The Vice-Chair (Mr. Jim Brownell): Any comments?

Mr. Toby Barrett: I recall that this advice came from at least one of our deputants, the Canadian Consumer Specialty Products Association, where they did suggest an amendment. They would wish to remove the term “substance of concern.” They feel that it’s very important that there be a very clear definition of what we’re talking about and a very clear definition of “toxic substance.” They go on to say that they’re suggesting that, rather than using a phrase like “substance of concern,” we stick with the Canadian Environmental Protection Act’s definition of toxic substances for the purposes of this bill. They also gave a precise definition in their submission.

So they very simply ask that this phrase, “substance of concern,” be removed.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: We won’t be supporting this either. The intent of the bill is to give the people of Ontario more information, not less. Substances of concern are not tracked, currently, through the NPRI system, so we don’t have that accessible information readily available regarding the extent of the use of these substances.

The substances of concern that are being talked about are proposed to include approximately 20 toxic chemicals of concern, identified by the MOE through the expert panel, that are not currently tracked for the people of Ontario through the NPRI. We think they should be.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You’ve heard the motion. All in favour? Opposed? The motion is lost.

Next we have section 2, page 5: an NDP motion.

Mr. Peter Tabuns: Withdrawn, Chair. Since the earlier amendment was defeated, the definition is redundant.

The Vice-Chair (Mr. Jim Brownell): Okay. Next we have section 2, page 6: an NDP motion.

Mr. Peter Tabuns: I move that section 2 of the bill be amended by adding the following definition:

“safer alternative’ means an option that includes input substitution as well as a change in chemical, material, product, process, function, system or action, whose adoption to replace a toxic substance currently in use would be the most effective in reducing overall potential harm to public health and safety, workplace health and safety or the environment;”

Very simply, if we’re going to be talking about putting in place safer alternatives in the course of toxic substitution or reduction, it is useful to have a definition in place.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: Again, I think Dr. Diamond, chair of the expert panel, was quite clear when she addressed the committee last week. What she said was that science is constantly moving: “There are some substances that cannot be substituted, and it’s industry that has to make those decisions, not government.” We agree with that. We think that the science behind what are called safer alternatives, at this point in time, is varied and inconsistent. What we don’t want to do is risk making companies replace one known toxic substance with an alternative that we simply don’t know enough about yet.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Barrett?

Mr. Toby Barrett: In the meaning described for “safer alternative,” the phrase “potential harm” is used. I suppose virtually any substance, including water, for example, has potential harm, if you’re exposed to water in sufficient quantities. Again, that one is kind of open-ended, and I have a concern with including that phrase.

The Vice-Chair (Mr. Jim Brownell): Anything further? You’ve heard the motion. All in favour? Opposed? The motion is lost.

We go to section 2, page 7: an NDP motion.

Mr. Peter Tabuns: I move that section 2 of the bill be amended by adding the following definition:

“sustainable development’ means development that meets the needs of the present without compromising the ability of future generations to meet their own needs;”

Again, if we’re going to put in place an institute, which I hope in fact will be added to this legislation, it needs some principles to guide its development, and this is one of the principles that needs to be there.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Kevin Daniel Flynn: I think if Mr. Tabuns and I had a debate about sustainable development, we’d probably walk away agreeing with each other, but for the purposes of today’s discussion on Bill 167, the principle of sustainable development is simply beyond the scope of this bill. It’s not relevant for the operation of the

proposed act that’s before us today, although I’m sure we’d find a lot of areas we agreed on.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Tabuns.

Mr. Peter Tabuns: Increasingly, I am concluding that the words “sustainable development” are not needed for this act. I think it would be really good if it was needed for this act, but the way it’s written and the way it’s not being dealt with, I think you’re probably right, Mr. Parliamentary Assistant.

The Vice-Chair (Mr. Jim Brownell): You’ve heard the motion. All in favour? Opposed? The motion is lost.

Shall section 2 carry? All in favour? Opposed? Carried.

Moving to section 3, we have an NDP motion on page 8.

Mr. Peter Tabuns: I move that paragraph 1 of section 3 of the bill be struck out and the following substituted:

“1. The facility,

“i. is a sewage treatment plant,

“ii. is a facility for the production of energy, or

“iii. belongs to a class of facilities prescribed by the regulations.”

Simply, the expert panel called for the act to apply to all sectors that meet the thresholds, including energy and waste management. Sewage treatment plants are major sources of mercury, arsenic and lead. If we’re actually going to deal with those problems, we need to put sewage treatment plants into this legislation, and if we don’t do that, the impetus for municipalities to put in place sewer use bylaws and enforce those sewer use bylaws won’t be there. This act will miss a major source of contamination.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Toby Barrett: As I mentioned earlier, I thought the government would have come forward with some more fulsome amendments. We all heard the presentation by Janelle Witzel from Environmental Defence. She indicated that currently only 260 of the 450 Ontario municipalities have sewage bylaws, and the discharge limits differ. Mr. Tabuns made mention of some of the toxics. She presented information from Pollution Watch indicating that sewage treatment plants are responsible for approximately 87% of mercury emissions, 37% of arsenic emissions and 71% of lead emissions. I think that is very serious. I guess I just assumed the government would pick up on that one.

1440

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn.

Mr. Kevin Daniel Flynn: Indeed, we have picked up on it, and we think that the proposed route that we’re suggesting is one that actually gives us a lot more flexibility. I think you have to realize that the proposed sectors that we have before us just today cover about 75% of the emissions in Ontario today. When the coal plants close down, the vast majority of the remaining 25% will be covered off as well.

The whole point of this proposed bill that’s before us is to deal with the inputs, is to deal with the front end as opposed to dealing with the tail end of the pipe. Dealing

with the effluent plant emissions simply isn't the way to go in this regard. What will happen as a result of that is that a lot of the sewage and the solid waste that goes into the effluent treatment plants will be covered under this legislation. I think that's a more responsible approach, I think it's all-encompassing, and I think it's one that we should support today.

Mr. Peter Tabuns: Recorded vote.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Ayes

Bailey, Barrett, Tabuns.

Nays

Flynn, Jeffrey, Kular, Mauro, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

Okay. We have section 3, page 9, an NDP motion.

Mr. Peter Tabuns: I move that paragraphs 2 and 3 of section 3 of the bill be struck out and the following substituted:

"2. The toxic substance is used or created at the facility and the amounts of the substance that are used or created are greater than,

"i. 100 kg per year, or

"ii. a quantity that is less than 100 kg per year, if such a quantity is prescribed."

Very simply, this would lower the threshold to the city of Toronto's standard. You will have many small sources of toxic chemicals in urban environments. The way the bill is written now, those smaller sources will not be addressed. I think that's a gap in the bill, and it would be remedied through adoption of this amendment.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: I think it's been the tone so far that there's some—I think an opinion that's been offered so far by the opposition is that a lot more should be included in the bill. Our approach is that, with the consultative approach we've taken to date, the real decision points should be taken in consultation with some of the environmental groups, with some of the industry that is affected by this, and we would much prefer to see that done by regulation.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Toby Barrett: I'm unclear. The 100 kilograms per year, I don't know whether that is a federal benchmark or not, or whether that is within the NPRI reporting levels. I just wasn't clear where that 100 kilograms came from.

The Vice-Chair (Mr. Jim Brownell): Mr. Tabuns.

Mr. Peter Tabuns: It comes from the city of Toronto's standard.

Just in response to Mr. Flynn, I thought we'd heard from the environmental groups; in fact, the amendments I bring forward reflect their concerns and interests.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Kevin Daniel Flynn: I'm just being reminded that as we sort of look ahead to the afternoon, when we get to our motion number 40, if we ever get to motion number 40 this afternoon, our approach to this will be seen and will be expanded upon. And our approach to date is consistent with the federal levels.

The Vice-Chair (Mr. Jim Brownell): Anything further? You've heard the motion. All in favour? Opposed? The motion is lost.

We move on to section 3, page 10, a government motion.

Mr. Kevin Daniel Flynn: I move that section 3 of the bill be amended by adding the following subsection:

"Use of single document

"(2) A single document may contain more than one toxic substance reduction plan."

The reason for this is the motion would allow facilities to prepare a single document containing a number of toxic substance reduction plans prepared for toxic substances used or created at the facility. This comes about as a result of the input that came from a lot of our partners in industry suggesting that this be clarified, and we believe that this amendment does clarify it.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Toby Barrett: I suppose this is heading in the right direction. We certainly heard from deputants about the fact that this is paper-driven and process-driven, rather than results-driven, and if there are so many forms to fill out and paperwork and the frequency of reporting, maybe this is a small way of heading in the right direction.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is carried.

Shall section 3, as amended, carry? All in favour? Opposed? Carried.

We move on to section 4, page 11: a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that paragraph 1 of subsection 4(1) of the bill be amended by striking out "that the owner or the operator of the facility intends" and substituting "that the owner or the operator of the facility intends, on a risk prioritized basis" at the end of the portion before subparagraph i.

Again, this issue of a risk-based criteria, using that as the priority—and I do recall the Canadian Petroleum Products Institute believed the most important test of any toxic reduction strategy is the minimization and, where science dictates, the elimination of human exposure, not how the substances are being used in the manufacturing process.

I think of an oil refinery, for example. It's so important to set priorities that eliminate risk of emission

rather than documenting what is flowing through the pipelines or what would be contained in some of the tanks of the other vessels.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We won't be supporting this either. Quite simply put, if this were passed what you would do is you would allow many of facilities intended to be covered under this act to circumvent the planning process. We simply don't want to see that.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Next we have section 4, page 12: a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that paragraph 1 of subsection 4(1) of the bill be amended by striking out "and" at the end of subparagraph i, adding "and" at the end of subparagraph ii and adding the following subparagraph:

"iii. to reduce the level of emissions of toxic substances for the total facility, on a risk prioritized basis."

Again, somewhat the same rationale for this particular amendment. The concern around exposure to the environment or to human beings is all about emissions or escapes of toxins. It's so important to marshal scarce resources, both on the part of government and industry, and to focus on the risks.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We won't be supporting this. Quite simply, it's contradictory to the intent of the bill, and that's not what we want to see. When you look at Ontario's environmental record to date regarding emissions, it simply isn't sufficient to continue to do what we've been doing in the past, and that was the end-of-the-pipe approach. There's broad public support for the initiative we have before us today, and certainly by supporting this we would be altering the intent of that. That's contrary to the intent of the bill.

1450

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Section 4, page 13, a PC motion.

Mr. Toby Barrett: I move that paragraph 4 of subsection 4(1) of the bill be struck out and the following substituted:

"4. A description of the total facility that uses or creates the toxic substance, including,

"i. a description of how, when and where the substance is emitted from the total facility, and

"ii. quantifications that,

"A. were made under section 9 before the plan was prepared, and

"B. were used to prepare the plan."

Again, the focus on the word "emitted" is a concern with respect to doing something about emissions and preventing emissions, rather than just documenting chlorine in water, for example.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Kevin Daniel Flynn: Quite similar to the previous argument, the intent is to do more than just deal with emissions. The whole intent of this bill is to deal with the use and the creation of toxics.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Section 4, page 14, a PC motion.

Mr. Toby Barrett: I move that paragraph 5 of subsection 4(1) of the bill be struck out and the following substituted:

"5. A description and analysis of the options, determined based on consideration of the risk of exposure to emissions, for reducing the use and creation of the toxic substance at the facility."

I mentioned chlorine. We were told by one of the deputants that chlorine is an extremely hazardous substance, but the hazardous nature of this substance allows us to make our water safe to drink. We don't necessarily need legislation to reduce chlorine that is being intentionally put in water. What we want to do is reduce the risk associated with chlorine by reducing the probability of exposure, reducing the probability of emission, not reducing the use of chlorine.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We won't be supporting it again. Same argument as before; these are starting to sound quite similar.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Section 4, page 15, a PC motion.

Mr. Toby Barrett: I move that subsection 4(1) of the bill be amended by adding the following paragraph:

"7.1 In the case of a facility that uses the toxic substance in relation to the use and processing of raw material feedstocks from nature, such as crude oil, rocks and trees,

"i. a description and analysis of options, determined based on consideration of the risk of exposure to emissions, that were considered for reducing the emission of the toxic substance into air, water and land,

"ii. a statement identifying the options described in subparagraph i that will be implemented, or a statement that none of the options will be implemented, and

"iii. if an option described in subparagraph i will be implemented, the items set out in subparagraphs 7 i to v, with necessary modifications."

Again, the importance of the focus on emissions of toxic substances, based on scientific evaluation of the rate of risk. I mentioned before that substances that are contained within closed lines, say, at an oil refinery, do not themselves present a risk to humans or the environment. There are emergency preparedness processes that are in place and have to be maintained, again, to help

deal with the possibility of emissions and to deal with emergencies like that as rapidly as possible.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: As we move through on the consultative process that's envisioned, we would not be supportive of this motion. What we intend to do is work closely and consider the approaches that other jurisdictions have taken in order to address concerns that are associated with the application of requirements to some of the substances. An example of that may be the metal alloys, for example, that we were talking about before.

The intent is to work with stakeholders in a variety of industries to develop the right approach for each of the sectors and to come up with a made-in-Ontario toxic solution that the people of Ontario would be supportive of.

The Vice-Chair (Mr. Jim Brownell): Mr. Barrett?

Mr. Toby Barrett: I'm quite heartened by the statement by the government to work with stakeholders, because so many stakeholders came before this committee and did their best to make clear not only the cost of compliance with some of this process, but the fact that, as they indicated, the level of detail is neither necessary nor useful in terms of reducing the kinds of toxics that present a real risk to people through exposure.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is defeated.

We have section 4, page 16, a PC motion.

Mr. Toby Barrett: I move that section 4 of the bill be amended by adding the following subsection:

"Exemption

"(1.1) A facility is not required to include the items described in paragraphs 4, 5, 6 and 7 of subsection (1) in a toxic substance reduction plan for a toxic substance if the use of the toxic substance relates to the use and processing of raw material feedstocks from nature, such as crude oil, rocks and trees."

Again, I think of the Ontario Mining Association, who testified before all of us here. They indicated that a risk-based decision-making process on toxics makes sense to them. Their president explained further that toxicity will vary according to the nature of exposures—inhalation, skin contact or ingestion—the form of substance to which exposure occurs, and the duration of exposure. So there are a number of variables there, as explained to this committee. As you said, this is why we are strongly urging the government to refrain from the inclusion of substances based solely on the consideration of their inherent toxicity without a disciplined consideration of exposure, which is a critical element of full risk evaluation and thoughtful management of chemical substances.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: Once again, we aren't supportive. If we adopted all the PC amendments, I don't think we'd have anything left. I think they've all been exemptions; there'd be nothing left to exempt.

We believe there's considerable value in undertaking a reductions planning exercise for natural feedstock materials. Developing toxic substance reduction plans for toxics and feedstocks would help facilities to identify and to better understand the overall use of toxics, including from natural sources, and provide incentives to consider alternate raw materials where that's feasible.

We think we're taking a balanced approach. There obviously are people who are trying to weaken this legislation; there are people who think it doesn't go far enough. What we're presenting today are some amendments to a bill that we think is being presented in a balanced sense, that understands that the people of Ontario want increased environmental protection but not necessarily at the expense of the economic health of this province. We believe that the bill, as stated and with the amendments, provides that balance.

The Vice-Chair (Mr. Jim Brownell): Further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Shall section 4 carry? All in favour? Opposed? Carried.

Now, since we have no proposed motions for sections 5, 6 and 7, shall those sections carry? All in favour? Opposed? Carried.

We move to section 8. We have a government motion, page 17. Ms. Mitchell.

1500

Mrs. Carol Mitchell: I move that clause 8(1)(b) of the bill be amended by striking out "available to the public" and substituting "available to the public on the Internet and by other means".

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: Quite simply, we're responding to the needs of the stakeholders. They have requested that this bill clearly articulate that the public will have access to certain information through the Internet. This clarifies that intent.

The Vice-Chair (Mr. Jim Brownell): Any further debate? All in favour of this motion? Opposed? The motion is carried.

We move on to section 8, page 18: a PC motion.

Mr. Robert Bailey: I move that section 8 of the bill be amended by adding the following subsection:

"Scope of public information

"(1.1) For the purposes of clause (1)(b), the owner and the operator of a facility is only required to make available to the public the portions of a summary that relate to the risk of exposure to emissions."

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Robert Bailey: The Sarnia-Lambton Environmental Association, which presented here as a deputant, felt that disclosure of information around the use of toxic substances may create unwarranted fears amongst the public and unattainable expectations within the community. The Sarnia-Lambton Environmental Association also supports the belief that the community has a right to know about toxic emissions and that industry has an obligation to limit emissions based on a scientific evalu-

ation of the risk for exposure and the potential for adverse effect on human health and the environment.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: If the intent was to only deal with emissions, then the bill would certainly only deal with emissions. The intent of this act is to go much further than that: to actually deal with the creation and the use of toxic substances and to inform Ontarians about those toxic substances. So we will not be supportive.

The Vice-Chair (Mr. Jim Brownell): Any further debate? All in favour of the motion? Opposed? The motion is lost.

Section 8, page 19: government motion, Ms. Mitchell.

Mrs. Carol Mitchell: I move that section 8 of the bill be amended by adding the following subsection:

“Use of single document

“(3) Summaries of more than one toxic substance reduction plan may be contained in a single document.”

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: This motion, along with motions 10, 21 and 33, is an example, I think, where we’ve allowed flexibility in the case of toxic substance reduction plans and reports on the substances of concern, respectively. As we heard from industry, there was a lack of clarity, in their feeling that perhaps they would have to submit an individual report for each one of the toxic substances that are in their facility. All we are looking for, really, is for that one document that may include a number of toxic substances.

The Vice-Chair (Mr. Jim Brownell): Further debate? You’ve heard the motion. All in favour? Opposed? Carried.

Shall section 8, as amended, carry? All in favour? Opposed? Carried.

Section 9, page 20: We have a PC motion.

Mr. Toby Barrett: I move that section 9 of the bill be struck out and the following substituted:

“Toxic substance accounting

“9.(1) The owner and the operator of a facility who are required under section 3 to ensure that a toxic substance reduction plan is prepared for a toxic substance shall ensure that, for the total facility, the net use and the total emissions of the substance from the total facility are quantified in accordance with the regulations.

“Exemption

“(2) Subsection (1) does not apply if the facility’s use of the toxic substance relates to the use and processing of raw material feedstocks from nature such as crude oil, rock and trees.”

The Vice-Chair (Mr. Jim Brownell): Any comments?

Mr. Toby Barrett: Again, substances that are contained within tanks and vessels in closed lines do not present a risk to humans or to the environment except when there is an emergency situation where there’s an emission. Given this, the prime focus of the bill for manufacturing facilities should be on reducing those

kinds of releases or those kinds of emissions on a risk basis.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We would not be supportive of this. Simply, all this would do is maintain the status quo. The people of Ontario and we agree that stronger legislation needs to be brought to bear on this issue, and that’s what the intent of the bill is.

Changes to the bill, as proposed by this motion, would mean that the facility would not have to complete a process-by-process analysis of toxic use, creation, transformation or destruction, and the intent of the act simply is that they would.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is lost.

Shall section 9 carry? All in favour? Opposed? Carried.

We move on to section 10. We have page 21, a government motion. Ms. Mitchell.

Mrs. Carol Mitchell: I move that section 10 of the bill be amended by adding the following subsection:

“Use of single document

“(2.1) Reports prepared under this section with respect to more than one toxic substance may be contained in a single document.”

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: The intent is similar to a previous motion. That is, businesses came forward and said that they didn’t want to get mired in paperwork on this. The intent of this is to allow for that flexibility that allows the information we’re seeking to be contained in one document or report.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is carried.

Section 10: page 22, a PC motion. Mr. Barrett.

Mr. Toby Barrett: I move that section 10 of the bill be amended by adding the following subsection:

“Same

“(3.1) Despite subsection (3), a facility is not required to disclose to the public the use or presence of a toxic substance at the facility if,

“(a) the disclosure would result in disclosure of the facility’s proprietary information or other information that could create competitive disadvantage for the facility in relation to competitors in Ontario and in other jurisdictions; or

“(b) the disclosure would cause increased security concerns for the facility.”

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Toby Barrett: Again, some of this information came from the Canadian Petroleum Products Institute, and they stated that it’s “very important that the public is informed about the actual risks associated with toxic substances.” They indicated all member companies under the umbrella of the CPPI, the Canadian Petroleum Pro-

ducts Institute, “have environment, health and safety procedures to communicate with their local communities about their operation, their emissions, the potential risks, emergency preparedness and key improvement plans.” Broadly sharing simply “the use of toxic substances that are being properly handled or” sharing the presence of “toxic substances in products that meet regulatory requirements does not, in and of itself, provide inherent benefit to the health or environment of Ontarians.”

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: I think there’s actually similarity in the intent. The mover of the motion is suggesting that it be included in the bill or the act, and we’re suggesting that the best place for this type of a discussion to take place—where our aim in this, I think, is the same as the intent that has just been espoused by Mr. Barrett. We think we can craft an effective regulation that balances the community’s right to know about toxic substances with industry’s concern about confidentiality of their products and safety. We think the best place to do that is in a consultative process as the regulations are being drafted.

1510

Mr. Toby Barrett: That’s encouraging, and I know this has been done before at the regulation stage. I would look forward to hearings once the regulations are published. I think it would be very important, in that case, for a standing committee—I know that was done with respect to the nutrient management regulation—to open that up again and see how that works out as far as the regulations once we see them.

The Vice-Chair (Mr. Jim Brownell): Further debate? You’ve heard the motion. All in favour? Opposed? The motion is lost.

Next we move to section 10, page 23, a government motion.

Mrs. Carol Mitchell: I move that section 10 of the bill be amended by,

(a) striking out “available to the public” in subsection (3) and substituting “available to the public on the Internet and by other means”; and

(b) striking out “available to the public” in subsection (4) and substituting “available to the public on the Internet and by other means”.

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Kevin Daniel Flynn: Just a clarification, as before, that this information will be available online for members of the public.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is carried.

Section 10, page 24, a PC motion.

Mr. Toby Barrett: I move that section 10 of the bill be amended by adding the following subsection:

“Same, limitation

“(5) Despite subsection (4), the director shall not make information available to the public linking a toxic substance to a consumer product unless the toxic substance

is identified as a toxic substance in schedule 1 to the Canadian Environmental Protection Act, 1999.”

As I recall, during the deputations, the plastics industry commented on public disclosure in section 10, where it permits the director to make information available to the public. They cautioned this committee to take extreme care so that any information released to the public is not misconstrued and causes collateral damage to another substance. I know they described an example with respect to the use of ethylene. It’s a gas that’s used to make polyethylene, a solid—a totally different substance. Oftentimes, people do get confused—I get confused—with some of these terms and may assume that ethylene and polyethylene are somewhat the same product, when they could be completely different, apparently.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We’ve heard from the stakeholders in the public hearings to date, and it’s our intention that information provided to Ontarians on toxics and consumer products has to be accurate. Important as well, it’s got to be balanced, and it always has to be provided within the appropriate context. The government is going to continue to consult with stakeholders on the development of regulations related to the disclosing of information. It’s our intent during those consultations to find the balance between public transparency, which is obviously a major intent of this bill, and also the protection of confidential business information.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is lost.

Shall section 10, as amended, carry? All in favour? Opposed? The section is carried.

Now we move on to a new section, 10.1, on page 25. This is an NDP motion. Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Institute established

“10.1(1) The minister shall establish a body known as the Ontario Toxic Substance Use Reduction and Safer Alternatives Institute, which may be affiliated with one or more universities or colleges in Ontario.

“Purposes of Institute

“(2) The purposes of the institute established under subsection (1) include,

“(a) providing general information about and publicizing advantages of and developments in toxic substance use reduction and safer alternatives;

“(b) establishing courses, seminars, conferences and other events, reports, updates, guides and publications to provide technical information for facilities;

“(c) working in co-operation with the ministry, other ministries and other levels of government regarding promotion of toxic substance use reduction and safer alternatives;

“(d) developing and providing curriculum and training for higher education students and faculty on toxic substance use reduction and safer alternatives;

“(e) engaging in research, development and demonstrations of toxic substance use reduction and safer alternatives, including assessments of the impact of adopting such methods on the environment, public and workplace health, the economy and employment within affected facilities;

“(f) developing by a prescribed date and in conjunction with the ministry and any other prescribed ministries, a toxic substance use reduction and safer alternatives planning program for individuals who wish to be certified as toxic substance use reduction and safer alternatives planners;

“(g) sponsoring research or pilot projects to develop and demonstrate innovative technologies for toxic substance use reduction and safer alternatives;

“(h) assisting in the training of inspectors and others, if so requested by the ministry;

“(i) providing toxic substance use reduction training and assistance to individuals, community groups, workers, and municipal government representatives so as to allow them to understand and review reporting requirements, toxic substance reduction plan summaries, and other information available to the public under this act; and

“(j) conducting studies on potential restrictions on the use of toxic substances in Ontario, including,

“(i) existing provincial, national, and international experiences with restrictions,

“(ii) social, environmental, and economic costs and benefits of adopting restrictions, and

“(iii) specific toxic substances that should be considered for restrictions in the province and how such restrictions could be implemented.

“Planning program

“(3) The planning program referred to in clause (2)(f) shall provide training with respect to the following:

“1. Assisting facilities in the development and implementation of current toxic substance use reduction and safer alternatives.

“2. Preparing, reviewing and approving toxic substance reduction plans.

“Precautionary principle

“(4) The institute established under subsection (1) shall apply the precautionary principle and the principles of sustainable development in carrying out its duties and responsibilities under this act.”

Simply, this bill before us is silent on the establishment of a toxic reduction institute. If in fact you're going to develop the bill and deliver the goals that have been set forward, then you should be following a model that's effective. In Massachusetts their toxic reduction institute has been quite effective, in fact I would say integral to the success of their law. The expert panel set up to deal with toxics called for an institute as we've outlined here. Again, if the government is concerned with having a law that will actually deliver the reduction of toxics, it needs this mechanism.

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Kevin Daniel Flynn: We're not planning to establish a separate institute in this regard, although the member is right: When the Massachusetts model was established, it did include an institute. Massachusetts was quite a few years ahead of its time at that point and was basically out there on its own. The institute model we think works in that regard. What we're proposing is a network approach where we continue to work much more with our partners in industry and academia and members of the public, members of NGOs that exist today that simply did not exist 20 years ago.

We're also going to work with our partners to provide training and scientific research and to promote safer alternatives. The institute method is not the preferred method at this point in time.

1520

The Vice-Chair (Mr. Jim Brownell): Mr. Barrett.

Mr. Toby Barrett: The one concern here: We really don't know how much this would cost.

The Vice-Chair (Mr. Jim Brownell): Okay. Any further debate? Mr. Tabuns.

Mr. Peter Tabuns: Just that I've been working on toxic chemical issues for 20 years, and I have to say that 20 years ago there was a network of NGOs, individuals and academics who were working on these issues. That is not a new development in the world. Having an institute where you have a concentration of intellectual ability to carry forward a program would be very useful. I think you're missing out on an effective lever to make this bill actually deliver the goods.

I just call for a recorded vote.

Ayes

Tabuns.

Nays

Bailey, Flynn, Jeffrey, Kular, Mauro, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

Now we move to a new section: 10.2, page 26, NDP, Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Establishment of toxic substance reduction targets

“10.2 (1) The government of Ontario shall take measures to achieve the following targets through the use of toxic substance use reduction and safer alternatives:

“1. Within five years after the coming into force of this act, a 50% reduction in the use of toxic substances in Ontario from quantities released in the year the act came into force.

“2. Within five years after the coming into force of this act, a 20% reduction in the use of toxic substances in Ontario from quantities used in the year the act came into force.

“3. Within 10 years after the coming into force of this act, a 40% reduction in the use of toxic substances in Ontario from quantities used in the year the act came into force.”

Very simply, the expert panel which the government appointed recommended that the act include clear, viable and progressive goals. The Massachusetts Toxics Use Reduction Act required a state-wide 50% reduction of toxic by-products within 10 years. If we're actually going to spur green chemistry as a new industrial sector in Ontario and we're going to reduce the amount of toxics that are both produced and released in this province, you need to have targets. If you don't have targets, five years from now we could be in a situation where exactly the same amount of toxic chemicals is being released into the environment and the government of the day could say, “Well, you know, we did our best. There were no targets set. We're in compliance with the act.” I think, if you're actually going to have an effective act and an ability for the public to hold the government of the day accountable, you need the targets.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Barrett.

Mr. Toby Barrett: With respect to targets, I know this committee received testimony from Kathleen Perchaluk of the Canadian Cancer Society. The Canadian Cancer Society “recommends that Bill 167 include targets to effectively reduce the release of toxic chemicals,” and I don't think this focuses so much on release or emissions. As I recall, there is an amendment in here from the government with respect to targets, and I know that the concern from the Canadian Cancer Society is that this would be somewhat disingenuous if it adds in targets but does not address release.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Yes, the previous speaker is right. If you look ahead to motion 41, you'll have a motion before you in the next little while that would establish the authority in the bill for the government to indeed set targets. This, I believe, signals the intent of the government to set targets. At this point in time, though, we're not prepared to set arbitrary targets. What we're proposing to do is give the affected facilities time to collect and submit baseline information on toxics use and position themselves. We're proposing that after receiving the first cycle of reports from the facilities, we would examine the information received and consider what would constitute reasonable targets. Developing targets appropriate for Ontario needs to consider that while toxics remain a significant concern, we likely have made some progress in reducing them since 1989, when the Massachusetts program started. Industry has told us that some of the low-hanging fruit has been picked, and we certainly need to take this into account as we set those targets in the future.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Barrett.

Mr. Toby Barrett: Well, there is concern here. A 50% reduction in the use of toxic substances would result

in shutting down a fair bit of manufacturing in the province of Ontario. Some of these substances—granted they are toxic and they are used to make other substances, but these substances are needed.

I know I received an e-mail with respect to the refining industry in Ontario. The only way to comply with a 50% reduction in the use of toxic substances—that's what they use—to reduce that by 50% over five years, would be to reduce refining in Ontario or to do the refining outside of Ontario and essentially ship it into the province.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Tabuns.

Mr. Peter Tabuns: Yes, I don't want to waste the committee's time. I just want to note that the whole intent here is to substitute non-toxic products for ones that are toxic and currently in use.

Frankly, if you want to drive green industry and you want to drive green chemistry, that's what you've got to do. The jurisdictions that are smart enough to actually engage in an aggressive program of substitution will get ahead of us. We will not be leading-edge on industrial innovation or chemistry; we will lose jobs. We've done that in other sectors. A clinging to the chemistry of the past is not going to help Ontario. It's going to hurt us in terms of health. It's also going to hurt us economically.

Anyway, I've made my arguments; everyone else has made theirs. I'd like a recorded vote.

Ayes

Tabuns.

Nays

Bailey, Barrett, Flynn, Jeffrey, Kular, Mauro, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is defeated.

Next, we move to section 10.3. This is a new section, page 27, Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

“Establishment of fund

“10.3(1) Upon the coming into force of this act, the minister shall,

“(a) establish a fund to be known as the toxic substance use reduction and safer alternatives fund; and

“(b) appoint an administrator who shall be responsible to the minister for meeting the purpose of the fund.

“Purpose of fund

“(2) The purpose of the fund referred to in subsection (1) is to provide monies, which shall be dedicated and used to enable the minister, the ministry and other ministries to meet their obligations in implementing this act.

“Fund sources

(3) The fund shall have credited and transferred to it on an annual basis monies from the following sources:

"1. All fees imposed on facilities pursuant to section 10.4.

"2. All fees collected in connection with licences under the authority of clause 49(1)(e).

"3. All fees collected as penalties for contraventions of offences under this act.

"4. Any grant, gift or other contribution explicitly made to the fund.

"5. Any interest earned on monies in the fund.

"6. Any other monies that may be available or may be appropriated from the consolidated revenue fund for the implementation of this act."

The Vice-Chair (Mr. Jim Brownell): I would like to say that this motion is out of order according to standing order 57. It's a money motion, and it's out of order.

Mr. Peter Tabuns: Okay.

The Vice-Chair (Mr. Jim Brownell): All right. We'll move on to 10.4, page 28. This is an NDP motion. Mr. Tabuns.

Mr. Peter Tabuns: Given that the previous one was ruled out of order, this is withdrawn.

The Vice-Chair (Mr. Jim Brownell): Thank you. Next we have a new section 10.5: page 29, an NDP motion, Mr. Tabuns.

1530

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

"Technical assistance programs for businesses

"10.5(1) The minister shall, in consultation with other ministries, colleges, universities and private consortia, facilitate business transition to toxic substance use reduction and safer alternatives in Ontario by establishing a technical assistance program for businesses.

"Program content

"(2) The technical assistance program for businesses shall include the following:

"1. Programs to evaluate technologies, encourage university research and industrial collaboration, attract funding and additional support through federal and private sector grants and financial assistance.

"2. Direct grants and loans to businesses for costs required to implement toxic substance use reduction and safer alternatives.

"3. Technical support for individual companies or sectors.

"4. Technical assistance in assessing toxic substance use reduction and safer alternatives and assistance in forming groups to assess and develop safer alternatives.

"5. Research and development of safer alternatives, including demonstration projects.

"6. Market development programs to create demand for safer alternatives.

"7. Conferences, seminars and workshops focused on solving problems and evaluating technology development opportunities for particular sectors.

"8. Publications to assist particular sectors develop and implement toxic substance use reduction and safer alternatives.

"9. Such other measures as may be prescribed."

Very simply, if we want companies to make the transition from using, creating and relying on toxic substances, we're going to have to assist them, and this would be the methodology for providing that assistance.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We understand the intent here. We believe that by not prescribing the components of the assistance program, the ministry would have more flexibility in how and where that assistance should be provided.

We've already announced that if the bill is passed, the government plans to invest \$24 million to help industries transform their processes, find green chemistry alternatives and reduce the use of toxics in their operations.

It's likely that the ministry would also prepare some guidance documents to assist facilities in meeting their requirements and its associated regulations, if the bill is passed.

Also, the ministry is proposing to promote safer alternatives through support for industry and academic work on green chemistry and engineering.

We don't require any sort of legal authority to provide assistance to business, and it's our intent to provide that assistance.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You've heard the motion. All in favour? Opposed? The motion is lost.

We have a new section, 10.6: page 30: an NDP motion, Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

"Technical assistance programs for employees

"10.6(1) The minister shall, in consultation with the Minister of Labour, colleges and universities, cooperate in facilitating employee transition to toxic substance use reduction and safer alternatives in Ontario by establishing a technical assistance program for employees.

"Program content

"(2) The ministers mentioned in subsection (1) shall jointly develop a plan to ensure just and fair transition to re-employment assistance, vocational retraining or other support or arrangements to enable any employee displaced in the province as a result of the implementation of toxic substance use reduction or safer alternatives measures to be,

"(a) eligible for an available job with at least equivalent wages, benefits, and working conditions;

"(b) eligible for vocational retraining and job placement;

"(c) entitled to receive re-employment assistance and health benefits; and

"(d) entitled to receive any additional benefits pursuant to the provisions of a collective bargaining agreement."

Very simply, in the unlikely event that this bill results in a need for workers to move from one form of production to another, this would provide them with that assistance. The reality is that we've had people in the past, in this province, working with very toxic substances. Actually, they continue to, when you talk about asbestos. Where those hazards are eliminated, then there should be a program to help the workers who are involved move on to other employment.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Barrett.

Mr. Toby Barrett: There certainly would be a need for this kind of employment or lack-of-employment assistance if much of this legislation went forward; in particular, some of the targets that were described earlier.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: I think it's a matter of whether you consider the glass half full or half empty. We on this side consider that it's half full. We don't expect the impact of this legislation to be overly onerous on business. In fact, we believe the implementation of this bill will actually see the generation of economic opportunities for business.

Some of the speakers that came forward during the public hearings gave us, I think, some excellent examples of where profitability had been increased. Very small investments had been made; increased profitability, as I said; and very short payback periods, which can offset the costs of any implementation.

It's also our intent to include some grants for small business to assist in meeting proposed new requirements, as well as grants to any size facility that takes early action to implement toxics reduction actions.

We believe that it's covered off. We believe that instead of creating unemployment, we're going to see increased employment opportunities as a result of the passage of this bill.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Flynn, Jeffrey, Kular, Mauro, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

Next, we have a new section 10.7, on page 31, an NDP motion. Mr. Tabuns.

Mr. Peter Tabuns: Can I just ask that this be considered—no.

Interjection.

Mr. Peter Tabuns: I know. I think I have support from some on the committee, but I understand it's ne-

cessary. The movement of the head of the clerk indicates his response to my suggestion.

I move that the bill be amended by adding the following section:

"Identification of potential priority toxic substances

"10.7 (1) Not later than one year following the coming into force of this act, and every two years after, the minister shall identify and publish a list under subsections (4) and (5) of not more than 10 potential priority toxic substances of concern commonly used in Ontario industry or used in products sold in Ontario.

"Same

"(2) The first list published under subsection (1) shall be known as list 1 and the subsequent lists shall be numbered sequentially and shall each contain, subject to subsection (6), not more than 10 toxic substances.

"Criteria for identification

"(3) In determining whether a toxic substance should be identified as potential priority toxic substance under subsection (1), the minister shall consider,

"(a) whether the substance is a carcinogen, mutagen or reproductive toxin;

"(b) whether the substance is persistent or bio-accumulative;

"(c) whether the substance is an endocrine disruptor;

"(d) whether the substance is inherently toxic;

"(e) the extent to which the substance is used in Ontario industry or in products sold in Ontario;

"(f) the extent to which sensitive populations are exposed to the substance; and

"(g) such other characteristics as may be prescribed.

"Consultation on potential priority toxic substances

"(4) The minister shall ensure that notice of a list referred to in subsection (1) is made available to the public and shall seek comment from the public regarding,

"(a) prioritization of assessment of substances on the list,

"(b) whether substances should be added to the list, and

"(c) whether substances should be deleted from the list.

"Final version of list to be published

"(5) Following the consultation referred to in subsection (4), the minister shall make available to the public the final version of the list containing the order in which priority toxic substances on the list shall be the subject of safer alternative assessment reports under subsection (7).

"Ministerial authority to add to list

"(6) Despite subsection (1), the minister may at any time add a substance to a list, in which case subsections (4) and (5) shall apply at that time and the list may contain more than 10 priority toxic substances.

"Safer alternatives assessment reports

"(7) Within 180 days after the publication of a final version of a list referred to in subsection (5) and every year after, the minister shall select priority toxic substances from the list in the order in which they appear on the list and ensure that a safer alternatives assessment

report that evaluates the availability of safer alternatives to these substances is conducted and published.

1540

“Content of report

“(8) The content of a safer alternatives assessment report for a priority toxic substance shall include the following:

“1. The uses and functions of the priority toxic substance.

“2. The uses that result in the greatest volume or dispersion of, or highest exposure to, the priority toxic substance in the indoor, workplace, and natural environment.

“3. Consideration of the potential impacts to human health and the environment of the continued use of the priority toxic substance.

“4. Whether any of the existing uses of the priority toxic substance are trivial or clearly unnecessary.

“5. The public policy implications of a reduction in the use of the priority toxic substance where its current use is non-trivial or clearly necessary.

“6. Whether alternatives are available for the uses and functions of the priority toxic substance.

“7. Whether the alternatives identified in paragraph 6 are unacceptable, require further study, or are safer than the priority toxic substance.

“8. A qualitative discussion of the economic feasibility, opportunities or costs associated with adopting and implementing any safer alternatives to the priority toxic substance including a qualitative characterization of,

“i. the economic impacts of adopting and implementing a safer alternative on the Ontario economy,

“ii. any impacts on the workforce or quality of work life,

“iii. potential costs or benefits to existing business,

“iv. potential impact on the cost of providing health care if the product is a medical product, and

“v. the extent of human exposure to the priority toxic substance that could be eliminated and health care costs saved by adopting and implementing a safer alternative.

“9. Recommendations on a course of action that should be employed with respect to the priority toxic substance, including whether all uses of the substance should be prohibited.

“10. Such other matters as may be prescribed.

“Consultation on report

“(9) The minister shall ensure that notice of a draft of a safer alternative assessment report is made available to the public and shall seek comment from the public on the contents of the draft report before the report is finalized.

“Final version of report to be published

“(10) Following the consultation referred to in subsection (9), the minister shall make available to the public the final version of a safer assessment report.

“Timing for completion of reports

“(11) The minister shall ensure that not later than three years after the publication of a final version of a list under subsection (5), an assessment report has been drafted and finalized for each priority toxic substance on the list.

“Alternatives action plans

“(12) Not more than one year after the publication of a final version of a safer alternative assessment report for a priority toxic substance under subsection (10), the minister shall use the report to establish an alternatives action plan for that substance.

“Goal of plans

“(13) The goal of an alternatives action plan shall be to coordinate the activities of the government of Ontario and to require users of priority toxic substances to,

“(a) act as expeditiously as possible to ensure substitution of a priority toxic substance with a safer alternative while,

“(i) minimizing job loss, and

“(ii) mitigating any other potential unintended negative impacts; and

“(b) achieve such other goals as may be prescribed.

“Content of plans

“(14) Each alternatives action plan shall contain the following:

“1. Timetables, schedules and deadlines for achieving substitution of a priority toxic substance with safer alternatives for specified uses.

“2. Requirements for all facilities that manufacture, process, or otherwise use a priority toxic substance to demonstrate how they will substitute all specified uses of the substance with a safer alternative, including with respect to consumer products containing the priority toxic substance.

“3. Where the safer alternatives assessment report indicated that safer alternatives are feasible and of comparable cost and that all uses of the substance should be prohibited, a specific timetable for substituting a safer alternative for the priority toxic substance.

“4. Where the minister determines that implementation of the alternatives action plan for the substitution of a substance, or specified uses of a substance, will take longer than five years, a requirement for plain language labelling of products containing the substance identifying that the substance is present in the product and the impact of the substance on human health and the environment.

“5. Where the safer alternatives assessment report finds that safer alternatives are feasible but require extensive capital expenditure or training, the minister shall implement technical assistance programs for businesses and employees.

“6. Where the safer alternatives assessment report finds that safer alternatives are not feasible, the alternatives action plan shall designate research and development activities to be undertaken with a view to examining the future feasibility of finding safer alternatives for the substance.

“7. Such other items as may be prescribed.

“Consultation on plan

“(15) The minister shall ensure that notice of a draft of an alternatives action plan is made available to the public and shall seek comment from the public on the contents of the draft plan before the plan is finalized.

“Final version of plan to be published

“(16) Following the consultation referred to in subsection (15), the minister shall make available to the public the final version of an alternatives action plan for a substance.

“Action by other ministries

“(17) Following the publication of the final version of the plan referred to in subsection (16), all ministries shall take any required actions as set out in the plan.

“Precautionary principle

“(18) When exercising the duties and responsibilities set out in this section, the minister shall have regard to the precautionary principle and the principles of sustainable development.”

Currently, Bill 167 doesn't address the issue of substitution of less toxic substances, and we need a legislative framework within which to do that. This amendment does that. It gives comprehensive alternatives to industry. It encourages substitution that is consistent with the Massachusetts program.

The reality is that Ontario industry is already selling into the European Union, and the REACH program is going to be changing the rules of the game. We need to get a lot closer to what Europe is doing. This amendment will allow us to do that. I urge the government to support it.

The Vice-Chair (Mr. Jim Brownell): Further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: We will not be supporting this. The government, as a previous speaker stated, is not proposing at this time to require safer alternatives.

Quite clearly, we heard from the chair of the expert panel, Dr. Diamond. I'll reiterate what I said earlier. She said that the science behind safer alternatives is varied and inconsistent. “Science is constantly moving.... There are some substances that cannot be substituted, and it's industry that has to make those decisions, not government.”

What we are doing, in order to avoid these issues, though, is supporting the development of green chemistry in the pursuit of alternatives. Our government is committed to promoting safer alternatives through programming, specifically through support for industry and academic work on green chemistry and engineering.

Additionally, the regulated facilities are also going to be encouraged to consider safer alternatives to toxics in the development of their toxics substance reduction plans.

We've tried to achieve a balance. Obviously, we've heard today that some people would like things to remain as they are, and some people would like them to go off much further than we're proposing. We're taking what we think is a balanced approach to this. We don't want to place additional unnecessary administrative burdens on facilities, but we do want to ensure that we've got strong legislation. We believe we've struck the right balance.

The Vice-Chair (Mr. Jim Brownell): Further debate? You've heard the motion—

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Barrett, Flynn, Jeffrey, Kular, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

We have a new section, 10.8, on page 32. It's an NDP motion. Mr. Tabuns.

Mr. Peter Tabuns: This refers back to my earlier 10.2. I'll go forward, Mr. Chair.

I move that the bill be amended by adding the following section:

“Right to know

“10.8(1) The public shall have access to the information set out in subsection (2) by the means identified in subsections (3), (4), (5), (6) and (7).

“Pollutant inventory

“(2) The minister shall establish, maintain and make public a pollutant inventory that contains at least the following information:

“1. The alphabetical index record referred to in subsection 19(9) of the Environmental Protection Act.

“2. All records that are filed in the environmental site registry established under section 168.3 of the Environmental Protection Act.

“3. All reports submitted under section 6 of Ontario Regulation 127/01 (Airborne Contaminant Monitoring and Reporting) made under the Environmental Protection Act, R.S.O. 1990, c. E. 19.

1550

“4. All reports supplied to the ministry under the following regulations made under the Environmental Protection Act:

“i. Ontario Regulation 560/94 Effluent Monitoring and Effluent Limits—Metal Mining Sector).

“ii. Ontario Regulation 215/95 (Effluent Monitoring and Effluent Limits—Electric Power Generation Sector).

“iii. Ontario Regulation 561/94 (Effluent Monitoring and Effluent Limits—Industrial Minerals Sector).

“iv. Ontario Regulation 64/95 (Effluent Monitoring and Effluent Limits—Inorganic Chemical Sector).

“v. Ontario Regulation 214/95 (Effluent Monitoring and Effluent Limits—Iron and Steel Manufacturing Sector).

“vi. Ontario Regulation 562/94 (Effluent Monitoring and Effluent Limits—Metal Casting Sector).

“vii. Ontario Regulation 63/95 (Effluent Monitoring and Effluent Limits—Organic Chemical Manufacturing Sector).

“viii. Ontario Regulation 537/93 (Effluent Monitoring and Effluent Limits—Petroleum Sector).

“iv. Ontario Regulation 760/93 (Effluent Monitoring and Effluent Limits—Pulp and Paper Sector).

“5. The alphabetical index record referred to in section 13.1 of the Ontario Water Resources Act.

"6. All reports required under sections 61 and 81 of the Clean Water Act, 2006.

"7. All notices provided to the ministry under section 29 of the Pesticides Act.

"8. The alphabetical index record referred to in subsection 31(8) of the Pesticides Act.

"9. All adverse drinking water test results reported under section 18 of the Safe Drinking Water Act, 2002.

"10. Prescribed information, including consumer product labelling information about the impacts of prescribed pollutants on the environment and human health.

"Publication requirements

"(3) The minister shall ensure that the inventory established under subsection (2) is kept current and includes instructions in plain English and French on how to use the inventory.

"Searchable information on inventory

"(4) The minister shall ensure that the information contained in the inventory established under subsection (2) is capable of being searched by the following criteria:

"1. The name of the pollutant.

"2. The name of the person responsible for the pollutant.

"3. The geographic region, including postal code.

"4. The number of the regulation under which the information was filed.

"5. The instrument to which the information relates.

"6. The type of impact on the environment.

"7. The type of impact on human health.

"Reports

"(5) The minister shall ensure that reports, organized by the criteria set out in subsection (4) and by other prescribed criteria, may be created by a user of the inventory established under subsection (2).

"Public access

"(6) The requirement set out in this section to publish and maintain the inventory established under subsection (2) applies,

"(a) in addition to any other requirements under this act or any other act respecting public access to the documents listed in subsection (2); and

"(b) despite any requirement in any other act or regulation that would limit the disclosure or use of the documents listed in subsection (2).

"Consumer product warnings

"(7) No prescribed supplier shall supply to a consumer products that expose the consumer to a toxic substance unless the supplier includes a warning of the exposure in the prescribed manner.

"Safety data sheets

"(8) Despite clause 38(1)(d) of the Occupational Health and Safety Act, upon the coming into force of this act an employer shall furnish forthwith to the fire department which serves the location in which the workplace is located, a copy of every unexpired material safety data sheet required by that act in respect of hazardous materials in the workplace as defined under that act."

Members of the public have a right to know about toxics in their environment. They need full and ready

access to the information. This ensures that the toxics data that is out there is available in a readily searchable format, and that the citizenry will have at least the power of knowledge in their dealings with these kinds of problems.

The Vice-Chair (Mr. Jim Brownell): Mr. Barrett?

Mr. Toby Barrett: With respect to the amendment that commences on page 32, right off the top, the subtitle talks about a pollutant inventory and then gives considerable detail about pollutants and effluent. This proposed legislation is about reducing toxics, and I don't know why we would have this confusion between a pollutant and a toxic. Again, we've been given government legislation that gives us no idea what a toxic substance is. There's no definition. We've received a number of excellent definitions from people who came before the witness table. I think we're hampered in going forward on this legislation when we see references to effluent, to pollutants, to toxics. I think there's going to be an awful lot of confusion out there in the public.

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: I don't think there'll be any confusion at all. In fact, the government is proposing to set up a very-easy-to-understand, web-based information system that's going to provide timely and easily accessible information to all Ontarians on toxics. Quite frankly, we don't need legal authority to set that system up; it's something that we can do without passing a motion to do that.

We think that the new authorities in the bill that are related to consumer products that are talked about in the motion already position the ministry to take action to protect Ontarians, if that becomes necessary.

We take all these suggestions quite seriously. We consulted with the chief of emergency management in the Office of the Fire Marshal, and they confirmed that the provision of MSDS to the fire departments would create a huge administrative burden for departments and not have any significant benefit.

So while I understand some of the points that are being made, we think the approach we're taking is the right one and the balanced one.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You've heard the motion. Shall section 10.8 carry?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Flynn, Jeffrey, Kular, Mitchell.

The Vice-Chair (Mr. Jim Brownell): The motion is lost.

Next, we move to section 11, page 33: a government motion, Ms. Mitchell.

Mrs. Carol Mitchell: I move that section 11 of the bill be amended by adding the following subsection:

“Use of single document

“(2) Reports prepared under this section with respect to more than one substance of concern may be contained in a single document.”

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: It's similar to our previous motions 10, 19 and 21. This adds to the flexibility for the other documents required under the bill. We listened to the stakeholders in this regard and agreed that a single document would suffice to meet the intent of the bill.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Barrett.

Mr. Toby Barrett: I won't be supporting this. I know we had a discussion a number of amendments ago about this term “substance of concern” and the definition of that, which is as unclear in this legislation as the definition of “toxic.” We feel that phrase should be deleted from this legislation.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You've heard the motion. All in favour? Opposed? Carried.

Next, we have section 11: page 34, a PC motion.

Mr. Toby Barrett: I move that section 11 of the bill be struck out.

The Vice-Chair (Mr. Jim Brownell): At this point, I have to rule that out of order. Parliamentary procedure indicates that you could vote against this section.

Mr. Toby Barrett: I see. The reason is because I just finished explaining what the last—

The Vice-Chair (Mr. Jim Brownell): I've ruled it out of order.

Any debate on section 11?

Mr. Toby Barrett: I certainly welcome the opportunity with respect to debate on section 11. As I've raised a number of times—and it was raised during the hearings, as well, by the Canadian Consumer Specialty Products Association—the puzzlement around this term “substance of concern.” I know at that time I made the mistake of drinking a very strong cup of coffee, and that was affecting me. I am working on a can of Sprite, and I have no idea what is in this. There's a picture of a lemon and a lime on the outside, but I don't think that's in here. Some people, when you think of the various sugar substitutes, have concerns. At what point are some of these substances in cans toxic or substances of concern? We have no indication in this legislation what we're talking about here. I appreciate the opportunity to contribute to the debate on that.

1600

The Vice-Chair (Mr. Jim Brownell): Okay. Any further debate on section 11, as amended? Mr. Flynn.

Mr. Kevin Daniel Flynn: I just want to take this opportunity to tell the members, our own members as well, what a substance of concern is. It's proposed that it include 20 toxic chemicals of concern that have already

been identified by the Ministry of the Environment and the expert panel and that are not currently tracked on behalf of the citizens of Ontario through the NPRI system. Other jurisdictions around the continent have begun to examine and act on substances of concern as well, indicating that there's a growing awareness of the potential risks of these substances. It's very clear what a substance of concern is. We will be supporting section 11.

Mr. Toby Barrett: Would that be an amendment to the legislation to give us that definition you just read into the record?

Mr. Kevin Daniel Flynn: I think we've clearly defined what the substances of concern are. We've got the flexibility within the proposed legislation that allows that list. That is a flexible list. The expert panel I think was quite clear that concerns emerge on a daily, weekly, monthly or yearly basis and that the legislation needs to be flexible as well. Currently, there are 20 products.

Mr. Toby Barrett: I guess the concern, and I know certainly one of the deputants made it very clear, is the necessity for them to continue their book of business; they need a robust definition of what we're talking about here so they can make decisions accordingly. They need criteria for these kinds of decisions. You say it's flexible. That kind of uncertainty is bad for business, and it's probably bad when you're dealing with some of the products that may or may not be defined as toxic once we get the regulations.

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: For the edification of the member, then, I would refer him to the Great Lakes Regional Toxic Air Emissions Inventory and Ontario's regulation 127.1. He can see the review of the substances prioritized under the federal chemical management plan as well. I think that would give him a clear indication as to what the substances of concern are.

The Vice-Chair (Mr. Jim Brownell): Okay. We've had the debate. Shall section 11, as amended, carry? All in favour? Opposed? The section is carried.

All right, we got through that one. Next, we have a new section: section 11.1, on page 35, a government motion. Ms. Mitchell.

Mrs. Carol Mitchell: I move that the bill be amended by adding the following section:

“Progress reports

“11.1(1) The minister shall annually prepare a report describing progress relating to implementation of this act.

“Available to the public

“(2) The minister shall make the reports prepared under subsection (1) available to the public on the Internet and by other means in accordance with the regulations.”

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Kevin Daniel Flynn: As before, it's a clarification of the intent. Some people were asking how this would be made available. This is very, very clear that the report will be made available on an annual basis and will be made available to the public and by any other means

that may come out of the consultations within the regulations.

The Vice-Chair (Mr. Jim Brownell): Any further debate? If not, shall section 11.1 carry? All those in favour? Opposed? The section is carried.

Sections 12 and 13 have no proposed amendments. Shall sections 12 and 13 carry? All those in favour? Opposed? Carried.

Section 14: page 36, a PC motion. Mr. Barrett.

Mr. Toby Barrett: I move that clause 14(1)(a) of the bill be amended by striking out the words “or substance of concern”.

By way of debate, this is linked to the previous motion and discussion with respect to what we consider the unacceptability of this phrase “substance of concern.”

The Vice-Chair (Mr. Jim Brownell): Any further debate? No? Okay. Shall the motion carry? All those in favour? Opposed? The motion is lost.

Shall section 14 carry? All in favour? Opposed? Carried.

Sections 15 through and including 28 have no proposed amendments. Shall sections 15 through 28 carry? All in favour? Opposed? Those are carried.

We are on section 29, page 37. We have a PC motion.

Mr. Toby Barrett: I move that clause 29(1)(a) of the bill be amended by striking out “or a report on a substance of concern is prepared under section 11”. And for the same reasons given in previous debate.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is defeated.

Shall section 29 carry? All those in favour? Carried.

Sections 30 through and including 38 have no proposed amendments. Shall sections 30 through to 38 carry? All those in favour? Opposed? Carried.

Next, we have section 39: page 38, a government motion, Ms. Mitchell.

Mrs. Carol Mitchell: I move that subsection 39(3) of the bill be amended by striking out “the minister, the director or a provincial officer” and substituting “the director or a provincial officer”.

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Just to clarify, this is just a housekeeping change. There are no minister’s orders in Bill 167, therefore the reference should be removed.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? Carried.

Shall section 39, as amended, carry? All those in favour? Opposed? Carried.

Now we have sections 40 to 43 with no proposed amendments. Shall sections 40 to 43 carry? All those in favour? Carried.

Section 44: page 39, a PC motion.

Mr. Toby Barrett: I move that section 44 of the bill be amended by striking out “the document is revised to meet all of the requirements” and substituting “the docu-

ment was prepared in accordance with the purposes of this act”.

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Toby Barrett: As I recall, the Canadian Vehicle Manufacturers’ Association talked about this area in section 44. They use or have experience with the ISO 14001, and their experience is to incorporate NPRI and toxic substance reduction planning into business planning. The legislation would promote integration of toxics substance reduction planning into operations. They propose that the act include a provision that allows facilities that are certified and include objectives and targets to reduce pollutants or toxic reduction to be exempt from detailed reporting requirements.

1610

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Industry stakeholders that came forward told us quite clearly that they didn’t want to get into duplication or they didn’t want to increase their burdens. Bill 167, they said, should recognize existing pollution prevention and toxics reduction work that the facilities have already undertaken, and we agree with that and we listen to that. However, if the PC motion were accepted, facilities would only be required to display how their existing work was consistent with the purposes of the act, i.e., protecting human health and the environment, not that it met the requirements of the act or the regulations. So we’re saying that by accepting this motion, you potentially could allow false claims from people who were trying to circumvent the act, that existing work need not take into account the requirements of the proposed legislation. We believe that the existing approach we have to section 44 ensures that facilities can limit that burden that they don’t want and any duplication as well.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You’ve heard the motion. All in favour? Opposed? The motion is defeated.

Next we have section 44: page 39.1, a government motion, Mrs. Mitchell.

Mrs. Carol Mitchell: I move that section 44 of the bill be amended by striking out “as long as the document is revised to meet all of the requirements of this act and the regulations” at the end and substituting “as long as all of the requirements of this act and the regulations are met”.

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Hopefully we have some agreement on this. When industry came forward, they asked us if we would write section 44 to allow facilities that have already completed existing work that meets some of the requirements of the proposed legislation to be able to use that work toward developing their toxics substance reduction plans. However, we heard that section 44 as it was written may have caused some confusion, as the facilities may feel obligated to have their existing documents revised. That was not the intent. It

was the intent, and certainly is the intent to today that we're trying to clarify, that any work that has been performed in the past in this regard can be used toward the completion of that document.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is carried.

Shall section 44, as amended, carry? All those in favour? Opposed? The section is carried.

We have sections 45 through 47, with no proposed motions. Shall sections 45 to 47 carry? All those in favour? Opposed? Carried.

Next we have section 48: page 40, a government motion, Mrs. Mitchell.

Mrs. Carol Mitchell: I move that section 48 of the bill be struck out and the following substituted:

"Review

"48(1) The minister shall, at least once every five years, consult with experts and the public about,

"(a) possible changes to the lists of substances that are prescribed as toxic substances and as substances of concern; and

"(b) possible changes to the regulations prescribed for the purposes of paragraphs 2 and 3 of section 3 and paragraph 2 of section 11.

"Additional substances

"(2) The minister shall from time to time publish lists of substances that are not toxic substances or substances of concern but that the minister proposes to consider during the next consultation under clause (1)(a)."

The Vice-Chair (Mr. Jim Brownell): Debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Again, this is as a result of some of the representations that were made during the public hearings, and the intent of this is to expand the ministry's existing requirements. Both stakeholders and the expert panel themselves have requested that Bill 167 contain some sort of mechanism for the review of thresholds. This motion would meet that request. It would ensure that over time the ministry would review its own baseline thresholds for substance use and facility size based to consultation with the public and with experts in the field.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

You've heard the motion. All in favour? Opposed? The section is carried.

Shall section 48, as amended, carry? All those in favour? Opposed? The section is carried.

We move to section 49 on page 41, a government motion, Mrs. Mitchell.

Mrs. Carol Mitchell: I move that subsection 49(1) of the act be amended by adding the following clause:

"(c.1) setting targets relating to toxic substances;"

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Kevin Daniel Flynn: I think we've had this debate in some other motions, a clear indication that the government agrees with the setting of targets and thinks

that the most prudent time to set those targets is at the end of the first phase.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Toby Barrett: Yes, we have had debate, and I just remind the committee that the Canadian Cancer Society testified before the committee and stated that "Bill 167 include targets to effectively reduce the release of toxic chemicals.... Other jurisdictions that have enacted toxics use reduction legislation in the US and in Europe have demonstrated that targets are a necessary component to reducing and regulating toxics use and release."

They do make a point of setting targets for emissions or the release of products.

The Vice-Chair (Mr. Jim Brownell): Mr. Flynn?

Mr. Kevin Daniel Flynn: Just to be clear, then, if I wasn't, I'm saying that we agree with the cancer society. If this motion is accepted and the vote is positive, Bill 167 therefore would be amended to include new regulation-making authority that does indeed set targets.

Mr. Toby Barrett: Again, I know in the quote I just gave you that on two occasions the Canadian Cancer Society is talking about targets with respect to the release of toxic chemicals.

The Vice-Chair (Mr. Jim Brownell): Any further debate? If not, we have heard the motion. All in favour? Opposed? Carried.

Next we have section 49: on page 42, a PC motion.

Mr. Toby Barrett: I move that section 49 of the bill be amended by adding the following subsection:

"Conflict

"(1.1) A regulation made under subsection (1) does not apply to the extent that it overlaps or conflicts with a provision of an act or regulation made by the government of Canada respecting toxic substances."

I will comment on that. This was from the Canadian Petroleum Products Institute. Eric Bristow testified: "Fortunately in Canada, through the federal government's chemicals management plan, we already have one of the most stringent processes recognized in the world for assessing which substances should be considered as toxic. The CMP—that's the chemicals management plan—"process addresses not only the hazardous nature of a substance, but also the level of public and environmental exposure to that substance. Duplicating this process at the provincial level is not necessary and works against federal-provincial harmonization. Ontario should leverage and stay aligned with the federal government both in respect to the reporting of substances as well as the assessment as to which substances are deemed toxic."

I know that quite recently the parliamentary assistant did recognize that when industry testified they were concerned about duplication between this level of government and the federal.

1620

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn?

Mr. Kevin Daniel Flynn: If we go back to the presentation by the Canadian Cancer Society, I think all

members will recall that what they said was that with a few changes, which they suggested as well, they were very much in support of this bill.

The reason I can't support the motion that's on the floor is because it would fundamentally and negatively alter the operation of Bill 167. If the committee were to accept this motion today, Ontario would not be able to develop and implement key regulations that are necessary for Bill 167 to meet the same purposes that the Canadian Cancer Society supported right in front of us all last week.

I'd suggest that we not support this motion.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Shall section 49, as amended, carry? All those in favour? Opposed? The section is carried.

Now we have sections 50 to 63. I know that they're motions very similar to the ones, Mr. Barrett, that were previously ruled out of order. I'm wondering, do you want to group those together and speak on them, or do you want to take them separately as individual—

Mr. Toby Barrett: I may have a brief comment on some of them, just given the testimony—rather than collapsing them. We could maybe collapse at some point, but—

The Vice-Chair (Mr. Jim Brownell): Okay. We'll go to section 50, then.

Mr. Toby Barrett: I move that section 50 of the bill be struck out.

The reason I did that was at least one—

The Vice-Chair (Mr. Jim Brownell): This motion is out of order, but you can speak to the section.

Mr. Toby Barrett: Certainly. Speaking to that section—and I recognize it is out of order—for example, during committee hearings, the Canadian Chemical Producers' Association recommended "that sections 50 to 64 be deleted." They feel this is the job of the federal government.

The Vice-Chair (Mr. Jim Brownell): Okay. We'll just go through each one. Section 51.

Mr. Toby Barrett: I move that section 51 of the bill be struck out.

Further to the Canadian Chemical Producers' Association, the Sarnia-Lambton Environmental Association testified before this committee, "The SLEA is disappointed that this legislation has not recognized or been harmonized with the federal government's chemicals management plan, or CMP. The chemicals management plan is one of the most stringent processes in the world for the assessment of substances considered to be toxic."

That's my comment on that.

The Vice-Chair (Mr. Jim Brownell): Sections 50 and 51: Any further debate on those two sections? Mr. Flynn?

Mr. Kevin Daniel Flynn: I'm just asking for your guidance. I don't want to speak to each one of them, but I have some comments on them as a package. At some point, whenever it's appropriate, I would speak.

The Vice-Chair (Mr. Jim Brownell): Mr. Barrett, would you like to just go through those—

Mr. Toby Barrett: Yes, very quickly.

If I turn to page 45, the Canadian Paint and Coatings Association basically said the same thing. During hearings, they indicated, "The proposed bill gives the authority to the Minister of the Environment to ban or restrict the manufacture and sale of products, including those that may be deemed safe through scientific review by the federal government. Expanding or mandating administrative activity to products, with no scientific basis or transparency and with no health, safety or scientific rationale, would seriously undermine the Canadian regulatory system."

We heard this time and time again, and I just wanted to reiterate that.

The Vice-Chair (Mr. Jim Brownell): Okay. I'll have you go through the sections, right to 63, and Mr. Flynn and Mr. Tabuns, if you want to do the same—talk about those sections as a unit. Is that acceptable?

Mr. Toby Barrett: I'd like to comment on 53.

The Vice-Chair (Mr. Jim Brownell): Okay, you go ahead.

Mr. Toby Barrett: Just continuing on, again we heard in testimony the concern that provincial efforts to categorize toxic substances may differ from the science-based, risk-based approach of the federal government.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Mr. Toby Barrett: Section 54—I just continue on.

The Vice-Chair (Mr. Jim Brownell): You continue on to 56.

Mr. Toby Barrett: The paint and coatings organization indicated that there's a great deal of existing legislation and regulation in Canada, and they referenced appendix A. Again, they're concerned with this duplication.

The Vice-Chair (Mr. Jim Brownell): Anything further?

Mr. Toby Barrett: I'm just turning the pages of some of the notes that I had.

The Canadian Paint and Coatings Association and member companies suggested that additional provincial legislation, as we see within these sections, "would put the national regulatory framework at risk. It creates confusion and duplication in the marketplace, adds costs to an already economically stressed manufacturing sector and hurts Canadian competitiveness."

The Vice-Chair (Mr. Jim Brownell): We'll take everything right up to page 56. Carry on.

Mr. Toby Barrett: We could probably collapse much of the rest.

The point that so many of these organizations made, and I've probably missed some of the organizations that are opposed to having this in here—very simply, what they're saying is that this is the job of the federal government. I ask, why is the provincial government duplicating work that's already being done by the federal government?

The Vice-Chair (Mr. Jim Brownell): Further debate?

Mr. Kevin Daniel Flynn: I think I can group all my comments into one, because I think I understand where the member is coming from.

Just so the committee knows, as a first course of action, Ontario is going to continue to work with the federal government to promote the use of the existing federal powers that deal with toxics in consumer products.

These proposed new authorities that we have before us today would position the province to take action to protect Ontarians, if necessary. Consultation with stakeholders and the public would take place prior to the development of any regulation under these new authorities, and a number of amendments that relate specifically to the regulation-making authorities are made to the bill's compliance and enforcement provisions and come into force when the powers come into force.

We understand and we recognize that the federal government is committed to protecting the public from toxics and products, and that product importation sales and labelling are issues that are traditionally addressed at the federal level, but we believe that these compliance and enforcement powers are needed in order to enforce any regulations that may be adopted or that are adopted to prohibit or otherwise regulate the manufacture, sale or distribution of toxic substances or toxics in products, should that occasion arise.

The Vice-Chair (Mr. Jim Brownell): Any further debate on sections 50 to 63? Those are the sections that we grouped together to debate.

Mr. Toby Barrett: We are collapsing these various sections for the vote—again, just as long as we understand that so many industry organizations asked us not to do this. They felt there's just no basis for Ontario to have their regulation-making powers to prohibit or regulate the manufacture, sale or distribution. They reiterated that we have the Canadian Environmental Protection Act and that this is the job of the federal government. They made reference to that legislation from 1999 as being up to date and that it was reviewed federally in 2008, with all-party agreement that it was fundamentally sound. I guess that would assume the involvement of Liberal, Conservative, NDP, Bloc—I'm not sure who else is there in Ottawa.

The Vice-Chair (Mr. Jim Brownell): Any further debate?

Shall sections 50 to 63 carry? All those in favour?

1630

Interjection.

The Vice-Chair (Mr. Jim Brownell): We're voting on sections 50 to 63.

Interjection.

The Vice-Chair (Mr. Jim Brownell): No, I ended debate.

Sections 50 to 63: All those in favour? Opposed? The sections carry.

So we move on to section 64, page 57. We have a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that subclause 49(1)(n.1) of the Toxics Reduction Act, 2009, as set out in section 64 of the bill be struck out and the following substituted:

“(n.1) prohibiting or regulating the manufacturing, sale or distribution of,

“(i) a toxic substance or any other substance prescribed by the regulations, or

“(ii) anything that contains a toxic substance or any other substance prescribed by the regulations;”

The Vice-Chair (Mr. Jim Brownell): Debate?

Mr. Toby Barrett: Again, the authority to ban or restrict the manufacture, distribution or sale of a product known to contain a toxic substance, as I explained earlier, should be vested in the federal government.

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: Just to reiterate, prior to any action on this to the development of any regulation under these new authorities, there will be a very extensive consultation period with all stakeholders.

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

Next, we move on to section 64: page 58, a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that clause 49(1)(n.1) of the Toxics Reduction Act, 2009, as set out in section 64 of the bill be struck out and the following substituted:

“(n.1) prohibiting or regulating the manufacturing, sale or distribution of a toxic substance, a substance of concern or any other substance prescribed by the regulations.”

Again, I'll leave that to some of the same arguments that I've made in the past.

The Vice-Chair (Mr. Jim Brownell): Any further debate? No? Those in favour of the motion? Opposed? The motion is lost.

Next, we have section 64: page 59, a PC motion, Mr. Barrett.

Mr. Toby Barrett: I move that section 64 of the bill be amended by adding the following subsection:

“(2) Section 49 of this act is amended by adding the following subsection:

““(1)(n.1) or (n.2)

“(3) A regulation made under clause (1)(n.1) or (n.2) may only be made if,

“(a) the substance or consumer product that is the subject of the regulation is not regulated under the Food and Drugs Act (Canada) or the Canadian Environmental Protection Act, 1999;

“(b) in the opinion of the Lieutenant Governor in Council, the inherent toxicity of the substance or consumer product that is the subject of the regulation and the environmental and human health exposure related to the substance or product indicate that the regulation is necessary; and

“(c) the facilities affected by the regulation have been consulted.””

The Vice-Chair (Mr. Jim Brownell): Any further debate? Mr. Flynn.

Mr. Kevin Daniel Flynn: I think during the hearings last week we had a terrific presentation from the Canadian Cosmetic, Toiletry and Fragrance Association, and I just want to be clear in our actions in this regard that as a first course of action, Ontario is going to continue to work with the federal government to promote the use of the existing federal powers to deal with toxics in consumer products. There may be cases in the future where the federal actions taken on a toxic substance under the Food and Drugs Act or CEPA will not be sufficient to address Ontario's specific concerns regarding a particular toxic substance. These proposed new authorities will position the province to take action to protect Ontarians if necessary, and I underline the words "if necessary."

The Vice-Chair (Mr. Jim Brownell): Any further debate? You've heard the motion. All in favour? Opposed? The motion is lost.

We have section 64: page 60, a PC motion.

Mr. Toby Barrett: I move that section 64 of the bill be struck out.

It's ruled out of order.

The Vice-Chair (Mr. Jim Brownell): Out of order? Okay.

Shall section 64 carry? All those in favour? Opposed? It's carried.

Now we have sections 65 to 68 with no proposed motions. Shall sections 65 to 68 carry? All those in favour? Opposed? Carried.

We have a new section, 68.1: It's page 61R, NDP motion, Mr. Tabuns.

Mr. Peter Tabuns: I move that the bill be amended by adding the following section:

"68.1 The Occupational Health and Safety Act is amended by adding the following section:

"Employer to make and maintain inventory

"36.(1) An employer shall make or cause to be made and shall maintain an inventory of all hazardous materials and all hazardous physical agents that are present in the workplace.

"Inventory

"(2) The inventory required by subsection (1),

"(a) shall contain such information as may be prescribed; and

"(b) shall be prepared in consultation with the committee or health and safety representatives, if any, for the workplace or with a worker selected by the workers to represent them, if there is no committee or health and safety representative.

"Amendment to inventory

"(3) Where an inventory required by subsection (1) is amended during a year, the employer, not later than the first day of February in the following year, shall prepare

a revised version of the inventory incorporating all changes made during the preceding year.

"Reasonable effort by employer

"(4) Where, under the regulations, an employer is required to identify or obtain the identity of the ingredients of a hazardous material, the employer is not in contravention of the regulations if the employer has made every effort reasonable in the circumstances to identify or obtain the identity of the ingredients.

"Same

"(5) An employer shall advise a director in writing if, after making reasonable efforts, the employer is unable to identify or obtain the identity of the ingredients of a hazardous material as required by the regulations.

"Exception

"(6) Except as may be prescribed, subsection (1) does not apply to an employer who undertakes to perform work or supply services on a project in respect of materials to be used on the project.

"Employer to keep floor plan

"(7) The employer shall keep readily accessible at the workplace a floor plan, as prescribed, showing the names of all hazardous materials and their locations and shall post a notice stating where the floor plan is kept in a place or places where they are most likely to come to the attention of workers."

The Vice-Chair (Mr. Jim Brownell): Thank you. I do have to rule that out of order because you cannot amend a bill that is not open in clause-by-clause, and the Occupational Health and Safety Act is not open in this, so I rule it out of order.

Mr. Peter Tabuns: Okay.

The Vice-Chair (Mr. Jim Brownell): Next we have a new section, 68.2, page 62R. This is an NDP motion, Mr. Tabuns.

Mr. Peter Tabuns: My expectation, Chair, is that you would rule me out of order if I were to read this—

The Vice-Chair (Mr. Jim Brownell): Yes.

Mr. Peter Tabuns: —and so on that basis, I will withdraw.

The Vice-Chair (Mr. Jim Brownell): Okay, thank you.

We have no proposed amendments from sections 69 to 73 inclusive. Since we don't have amendments here, shall sections 69 to 73, inclusive, carry? All those in favour? Opposed? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 167, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

I thank you for your deliberations and your work here this afternoon on this clause-by-clause for Bill 167, and now I adjourn.

The committee adjourned at 1637.

CONTENTS

Monday 1 June 2009

Toxics Reduction Act, 2009, Bill 167, Mr. Gerretsen / Loi de 2009 sur la réduction des toxiques, projet de loi 167, M. Gerretsen	G-789
---	--------------

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Orazietti (Sault Ste. Marie L)

Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mr. Robert Bailey (Sarnia–Lambton PC)

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mrs. Carol Mitchell (Huron–Bruce L)

Mr. David Orazietti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants

Mr. Toby Barrett (Haldimand–Norfolk PC)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Tara Partington, legislative counsel



G-32

G-32

ISSN 1180-5218



Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Thursday 6 August 2009

Journal des débats (Hansard)

Jeudi 6 août 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Far North Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant
la Loi sur les mines

Loi de 2009 sur le Grand Nord

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Thursday 6 August 2009

Jeudi 6 août 2009

The committee met at 0902 in room 151.

SUBCOMMITTEE REPORTS

The Chair (Mr. David Oraziotti): Good morning, everyone. Welcome to the Standing Committee on General Government. We have two subcommittee reports that we need to take care of first. I'm going to ask Ms. Mitchell to start by reading the first one.

Mrs. Carol Mitchell: Your subcommittee met on Monday, June 22, 2009, to consider the method of proceeding on Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North, and recommends the following:

(1) That the committee meet in Toronto on Thursday, August 6, 2009, for the purpose of holding public hearings.

(2) That the committee meet in Sioux Lookout, Thunder Bay, Chapleau and Timmins during the week of August 10, 2009, for the purpose of holding public hearings.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in a daily or weekly paper in each of the locations for one day during the week of June 29, 2009. This is to include French and First Nations newspapers where possible.

(4) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the following publications: Northern Miner and—

Mr. Gilles Bisson: Wawatay.

Mrs. Carol Mitchell: Wawatay newspaper. Thank you, Gilles.

(5) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website, the Canada NewsWire and Wawatay radio.

(6) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Thursday, July 23, 2009.

(7) That groups and individuals be offered 15 minutes for their presentation. This will be followed by up to five minutes of questions by committee members.

(8) That, in the event all witnesses cannot be scheduled, the committee clerk provides the members of the subcommittee with a list of requests to appear by 2 p.m. on Thursday, July 23, 2009.

(9) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Tuesday, July 28, 2009.

(10) That late requests to appear will be accepted for any location provided there are spaces available.

(11) That the deadline for written submissions be 12 noon on Friday, September 4, 2009.

(12) That the research officer provide the committee with a summary of presentations.

(13) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That is the first report of the subcommittee.

The Chair (Mr. David Oraziotti): Thank you. Any questions?

Mr. Gilles Bisson: Just for the record, I find it sad that we didn't adopt in the subcommittee the decision to travel this committee into the far north communities—north of Highway 11—and this committee should have travelled to those areas because they are being affected.

The Chair (Mr. David Oraziotti): Any further comment or debate? Ms. Mitchell?

Mrs. Carol Mitchell: I just wanted to get on the record as well that this is the first hearing, we have the possibility of further consultations after the second, and we will look forward to the hearings unfolding.

Mr. Gilles Bisson: Just for the record, the mining act—second reading is already done. The mining act is now in committee. Once we do the clause-by-clause, it's going to go to third reading. That's why I think the mining act and the far north planning act had to travel to those communities. I'm not going to take up the presenters' time. I just want that on the record.

I would ask for a recorded vote.

Ayes

Brown, Colle, Hillier, Mauro, Mitchell.

Nays

Bisson.

The Chair (Mr. David Oraziotti): That's carried. Thank you.

The second subcommittee report, dated July 31, 2009. Ms. Mitchell, can you read that for me, please?

Mrs. Carol Mitchell: Your subcommittee met on Friday, July 31, 2009, to consider the method of proceeding on Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North, and recommends the following:

(1) That the committee not approve the Fort Albany First Nation request for expense reimbursement.

(2) That live audio streaming of the committee's meetings in Sioux Lookout, Thunder Bay, Chapleau and Timmins be made available on the Legislative Assembly's website.

(3) That the clerk, in consultation with the Chair, post information regarding the availability of live audio streaming on the Ontario parliamentary channel, the Legislative Assembly website, and the Canada NewsWire.

(4) That the committee agree to meet from 9 a.m. to 6 p.m. on Thursday, August 6, 2009.

(5) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

That's the second report.

The Chair (Mr. David Orazietti): Thank you, Ms. Mitchell. Any questions? Mr. Bisson?

Mr. Gilles Bisson: Again, I don't want to take the presenters' time, because we have limited time for presentations, but just for the record, if this committee was not going to travel to those far north communities, I think it's incumbent upon us to assist those communities that are having difficulty financially to make it to committee hearings wherever they might be.

There was a request from Fort Albany. That community is under administration. They don't have the dollars. It's not unlike other requests that we had at other committees. I know of other bills where the committees have accepted the travel costs for somebody to come to committee. I think it's really sad that we've said no to this community because it is one of the communities affected by this bill. In fact, it's one of the communities that negotiated an IBA with De Beers. We might have been able to learn something from their perspective, because they were one of the final holdout communities on the IBA that was signed there. So at the very least, we should have paid travel.

The second point is, the compromise was to provide live audio streaming. I would welcome that attempt. The only problems are (a) there are not a lot of computers in those communities because most people are impoverished, and (b) there's not any Internet or high-speed to make it work in the majority of those communities.

Again, the bill is going to affect those people—not able to get the committee there, not able to travel them down, and audio streaming, unfortunately, is not going to work in all these communities, so therefore, I'll vote against that particular amendment.

The Chair (Mr. David Orazietti): Mr. Mauro?

Mr. Bill Mauro: Just in regard to the Fort Albany remark, I think it's important for us as well to get on the record that there was a community outreach session held in Fort Albany, I think on July 10. So there was an attempt made to at least engage them further than beyond just this formal process.

Mr. Gilles Bisson: For the record, that was not on the consultations from this committee. That was from the ministry, which is a different thing. The chief and council made a request. They don't make that request because they just feel like going out for a trip one day. They do it because they have something they want to provide or they want to participate in. We should have accepted that request. We've done it in the past. Again, I'd just on the record say it's wrong. If we're not going to travel by committee to the far north communities, the least we can do is provide assistance where requested.

0910

The Chair (Mr. David Orazietti): Mr. Hillier.

Mr. Randy Hillier: We had a fulsome discussion and debate, and we're here for committee now to listen to people. This discussion right now is only a half discussion and a half debate. We've looked at the merits and the value, the subcommittee report is on the table, and I think we should proceed along and listen to the delegations that are here.

The Chair (Mr. David Orazietti): Thank you. Ms. Mitchell?

Mrs. Carol Mitchell: Just a short comment. The day's hearings have been extended to give everyone who wanted to speak today the opportunity. I appreciate that there was consensus reached on that. The audio streaming was another way of communication that we brought forward, and then we put out further advertisements, acknowledging that, in fact, was in place for all communities. Also, the ability to teleconference if people want to make presentations that way is available as well. I just wanted to get that on the record, Chair.

Mr. Gilles Bisson: Not to belabour the point, Chair, just the last comment. I appreciate Mr. Hillier's interjection. In fact, I've made it very clear that I don't want to hold up this committee in the morning because we're here to listen to people. But these bills are going to affect those communities in a very direct way, both the Mining Amendment Act and the Far North Act. I think it was incumbent upon us to, as much as humanly possible, be inclusive in our consultation, and I feel this process is not going to provide that, so therefore I ask for a vote.

The Chair (Mr. David Orazietti): Okay. A recorded vote has been called for for the subcommittee report.

Ayes

Brown, Colle, Hillier, Kular, Mauro, Mitchell.

Nays

Bisson.

The Chair (Mr. David Orazietti): The report is carried.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

ONTARIO REAL ESTATE ASSOCIATION

The Chair (Mr. David Oraziotti): Let's move to our presenters here on Bill 173 and Bill 191. First up we have the Ontario Real Estate Association. Good morning and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions from all three parties; the time will be divided. Please state your name for the purposes of our recording Hansard and you can begin your presentation when you like.

Ms. Barbara Sukkau: Barb Sukkau.

Mr. Jim Flood: Good morning. I'm Jim Flood.

Mr. Peter Griesbach: Good morning. My name is Peter Griesbach.

Ms. Barbara Sukkau: Good morning again. My name is Barb Sukkau and I'm the chair of the Ontario Real Estate Association's government relations committee. I want to thank you for the opportunity to present on Bill 173, the Mining Amendment Act, 2009. Joining me today are Jim Flood, OREA's director of government relations, and Peter Griesbach, one of our members who has been adversely affected by the current Mining Act.

By way of introduction, the Ontario Real Estate Association is one of the province's largest trade associations, with over 47,000 member real estate salespeople and brokers. OREA was founded in 1922 to organize real estate activities and develop common goals across the province. These goals include promoting higher industry standards and preserving private property rights.

Let me begin by saying that OREA is generally supportive of Bill 173. In our opinion, Bill 173 makes important progress towards stronger, better-defined property rights in our province. In particular, we are encouraged that section 15 of Bill 173 withdraws all mining rights from southern Ontario in areas where mineral rights are owned by the crown but surface rights are held privately.

As many of you know, southern Ontario was the region of greatest contention between prospectors and property owners. Removing mining rights on privately held land will stop the proliferation of confrontations between prospectors and property owners in the region.

Additionally, we commend Minister Gravelle for moving quickly after the bill's introduction to issue a mining rights withdrawal order for southern Ontario. This timely withdrawal order avoided what would have been a rush by prospectors to stake out as many claims as possible in southern Ontario as Bill 173 awaited passage.

In the area of prospector certification, OREA is pleased to note that Bill 173 reaffirms mandatory licensing. This section also now requires that licensees take a prospectors' awareness program as a condition of obtaining or renewing a prospecting licence. We believe that an effective licensing and continuing education regime will ensure that prospectors have a minimum level of training and are aware of the mining rights and restrictions that flow from the Mining Act. To complement the mandatory prospector course, OREA recommends that the ministry include a section that reviews the obligations that prospectors have to surface rights holders under the Mining Act and be required to carry appropriate liability insurance.

In northern Ontario, OREA believes that Bill 173 has, for the most part, found the right balance between ensuring a strong and vibrant mining industry and protecting the private property rights of northern Ontario property owners. In particular, OREA supports subsection 46.1(1), which requires prospectors to give notification of a claim to property owners within 60 days of making the application to record the claim. This requirement encourages ongoing dialogue between the prospector and the property owner, which will reduce confrontations and improve collaboration to ensure that damage to the property is limited during the initial exploration.

OREA is also pleased to see the inclusion of map staking in Bill 173, a recommendation that OREA made during the most recent Mining Act review process. As you are no doubt aware, traditional methods of prospecting are often destructive and intrusive to private property. Map staking removes the need to cut down trees or knock down fences when a prospector stakes a claim.

Although OREA commends the government for the aforementioned measures under Bill 173, we do have a few concerns with the legislation and the regulation-drafting process moving forward.

First, OREA notes that the purpose of Bill 173, as set out in section 2, does not mention or affirm the rights of surface rights owners. Therefore, we strongly recommend that section 2 be amended to include wording that recognizes and affirms the rights of surface rights holders, as has been done for aboriginal and treaty rights.

Second, as with most pieces of complex legislation, details on how specific measures contained in Bill 173 will be implemented have not yet been formulated. OREA therefore urges the Ministry of Northern Development and Mines to post all draft regulations on the environmental registry for comment by stakeholders. This will allow stakeholders to review and critique how the government envisions implementing specific amendments to the existing Mining Act. We look forward to reviewing these draft regulations and providing com-

ments as necessary. REALTORS know that if we take the time to get the new Mining Act right, it will save enormous amounts of resources in the future.

OREA is also concerned about section 12 of Bill 173, which amends the “restricted lands” section, or section 29 of the existing Mining Act. OREA does support the current list of restricted lands that are covered under the legislation. However, we suggest that the list be expanded to designate farms as being restricted from mining claims. According to the 2006 census, 2,479 farms encompassing a total area of one million acres of land are located in northern Ontario. OREA believes that the property rights of farm owners deserve the same level of protection that was initially granted under the original Mining Act and that is now afforded to other property owners under section 29.

OREA is also concerned about the arbitrary powers given to the directors of exploration pursuant to section 78 in the proposed legislation. While the concept of exploration permitting is sound, there should be some avenue of appeal available for surface rights owners.

Lastly, OREA is concerned about subsection 29(2) under the “restricted lands” section of Bill 173. In our opinion, subsection 2 creates a loophole for prospectors to stake out a claim and apply for permission to record the claim from the minister afterwards. OREA believes this section may lull or confuse many Ontario property owners into believing that their land is restricted from prospecting. OREA strongly believes that lands listed under section 29 should be completely off limits from staking until permission from the minister is given. REALTORS urge the minister to clarify through regulations under what specific circumstances subsection 2 can be used by a prospector to apply to the minister for approval for a previously staked claim. We look forward to reviewing the regulations for subsection 2 to ensure that there are not loopholes to circumvent the aim of creating a restricted-lands list in the new Mining Act.

Despite these shortcomings, OREA reaffirms its support of Bill 173 and the important steps towards strengthening private property rights it makes. However, the process is not yet complete. As the government drafts regulations to implement Bill 173, OREA urges it to continue to strengthen and define property rights as they relate to surface rights holders.

Bill 173 is an excellent opportunity for all of our elected officials to stand up and commit themselves to supporting Ontarians’ right to use, benefit from and transfer their property.

Thank you for the opportunity to present to the committee today, and we’d be happy to take any questions.

0920

The Chair (Mr. David Oraziatti): Thank you. Mr. Barrett.

Mr. Toby Barrett: Just a brief question, and I think Mr. Hillier has some questions. I fully support OREA’s position on property rights and have done so for many, many years, actually. Do you feel there is—in this legislation, does it reinforce or build on any different

definition of property rights? You mentioned property owners in southern Ontario. Is there a different application for treaty holders or aboriginal people? Do they have a different set of property rights in your view? Is this going to be a problem?

Ms. Barbara Sukkau: I think our goal or what we would like to see is the reaffirmation of property rights in general. Everybody should be treated the same, so if there are special concessions in the act for the aboriginal and the treaty rights, these surface holder rights should have the same value as everybody else’s.

Mr. Toby Barrett: Okay, thank you.

The Chair (Mr. David Oraziatti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much for being here. Just a few questions—and, of course, as a proponent of property rights as well, I am a little bit puzzled: You said in your presentation that this offers better protection for property rights and you make mention of the surface rights and mineral rights. This act does not grant property rights; it does not unify those mineral and surface rights; it just deems withdrawal of prospecting from those. Do you think that’s an improvement, where you’re just deeming withdrawal and not reunifying those surface and mineral rights?

Ms. Barbara Sukkau: Peter, do you want to answer that?

Mr. Peter Griesbach: Thank you, Mr. Hillier. The notion of reuniting property rights has been sort of in the background over the last year or year and a half, and I know that it’s one that you’ve promoted. The reality is that if you were to reunite the property rights, then they could be disunited or sold off again, and then you ask to have them reunited at some point in the future and back and forth. We think the solution that the government’s come up with for that issue is adequate by withdrawing mining rights.

Mr. Randy Hillier: And the other notion here of the people in southern Ontario having different rights conferred from people in the north—of course, those mineral rights are not being deemed withdrawn under this act, as they are in the south. Do you not find some conflict or difficulty with that?

Mr. Jim Flood: I think it’s probably a reflection of a different economic reality. Mining is a very small, insignificant business in southern Ontario; it is a very large, very important business in northern Ontario. I think the legislation reflects that difference.

The Chair (Mr. David Oraziatti): Thank you, that’s time. Mr. Bisson, questions?

Mr. Gilles Bisson: Yes, just a very quick one. On section 29 on page 4 of your submission you’re saying you’re concerned that section 29(2) allows a back door for prospecting. I’d like you to explain that, because what subsection (2) does, as I understand it, is provide the crown the ability to do right-of-ways for hydro. Explain that a bit to me, please. Where do you see the loophole being created?

Mr. Peter Griesbach: The loophole would be that there would be an opportunity to lay a claim down on top

of properties or parts of parcels that should be exempt or not included in the act. At that point, then, it appears to be a ministerial decision as to whether or not those properties would be included or excluded from the claim.

Mr. Gilles Bisson: And on the other issue, where you're talking about mandatory licensing, there's an amendment you're asking for to affirm and recognize the rights of property holders—hang on a sec; I made a note here—but you're making them akin to those of First Nations on treaty. I think that's a pretty big step, wouldn't you say, treaty rights versus a property right?

Mr. Jim Flood: No, I think what we asked for was a recognition of the rights of surface property owners to be put in the purpose section of the legislation.

Mr. Gilles Bisson: You're not asking for something akin to a treaty right.

Mr. Jim Flood: No. We want it in the purpose section.

Mr. Gilles Bisson: Thank you. That's all I've got.

The Chair (Mr. David Oraziotti): Thank you. Questions? Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. Your association has done great work in advocating for the people of Ontario who own real estate and wish to purchase real estate and rent real estate. We appreciate very much you coming and bringing your point of view here.

I have a question regarding your point about farms. I would like a further explanation about the particular issue related to the roughly 2,500 farms we see. Could you help me with that?

Ms. Barbara Sukkau: We're a little confused about that as well because in the original act, apparently the farmlands were included. Now, all of a sudden, in the new legislation, they are not included under the restricted land. We would like some clarification and we would like that to be included in the act as well, as restricted land.

Mr. Michael A. Brown: Insofar as restricted—insofar as staking is concerned? Is that what you're talking about?

Mr. Jim Flood: Yes.

Mr. Michael A. Brown: All right. We will seek to get some clarification about that, but my understanding is that all private property would be treated the same in southern Ontario. A farm is obviously private property. I will seek to find out a little bit more and we'll get back to you on that one. We appreciate your presentation and take your views very seriously.

Ms. Barbara Sukkau: Thank you.

The Chair (Mr. David Oraziotti): Thank you. That's time for your presentation. We appreciate you coming in today.

ONTARIO FOREST INDUSTRIES ASSOCIATION

The Chair (Mr. David Oraziotti): Our next presentation is the Ontario Forest Industries Association. Good

morning. Welcome to the Standing Committee on General Government. As you know, you have 15 minutes for your presentation and five for questions, so you just need to state your name for Hansard and you can get started.

Mr. Scott Jackson: Thank you, Mr. Chair. My name is Scott Jackson. I am the manager of forest policy for the Ontario Forest Industries Association. I have a degree in environmental biology from Queen's University and a master's in forest conservation from the University of Toronto.

Earlier this week the OFIA and the Canadian Lumbermen's Association, a provider of internationally recognized world-class grading and inspection services, joined forces under the umbrella of a single organization. Our association represents over 70 members and includes manufacturing companies ranging from large multinational corporations to small, family-owned businesses that produce a broad range of products, including pulp, paper, paperboard, lumber, panelboard, plywood and veneer. We also represent members of the wholesale and export sector, forest management companies, lumber operators and more.

First off, I would like to express my thanks for the opportunity to present the thoughts and concerns of the Ontario Forest Industries Association today. As you are likely aware, the OFIA was a member of the far north advisory council established by the Minister of Natural Resources and has had some significant reservations with the government's approach to this bill since the outset, many of which were raised during deliberations at council meetings. What you will hear this morning is a reiteration of the OFIA's main positions and concerns, concerns that have not changed since the initiative to permanently protect over 50% of Ontario's northern boreal region was announced by the Premier on July 14, 2008.

What you will not hear from the OFIA is double-talk or backtracking on any of our previous positions or concerns. Unlike many other groups that showed outright support for the government's announcement last July and recently for Bill 191 through media releases, editorials and quotes on the MNR website, the OFIA has remained consistent on its positions and concerns with this initiative. In fact, the OFIA is one of the few organizations that participated on the advisory council that did not provide public support for Bill 191 on the MNR website following first reading. That is because the OFIA has never supported Bill 191. More specifically, the OFIA has never supported the government's societal and political objective to permanently protect over 50% of the northern boreal region.

The reason that we never supported the government's announcement or Bill 191 is based on some fairly straightforward and fundamental premises. On July 14, 2008, the Premier of Ontario announced that he would be protecting a minimum of 225,000 square kilometres, or at least 50% of the northern boreal region, and that this area would be permanently protected, and these areas would

not be open to development outside of tourism or traditional aboriginal uses. There is no misrepresenting these statements: The government vision was, and is, to have at least 50% of the region in permanently protected parks.

The OFIA does not support permanent protection of a minimum of 50% of the region. There is no scientific rationale to support the permanent protection of at least 50% of the northern boreal. The decision to permanently protect at least 50% of the area, or the 225,000 square kilometres, was a unilateral, political decision made by the government of Ontario to satisfy southern special interests.

In fact, the concept of permanent protection does not even line up with some of the government's own stated objectives and is based on incomplete information, notably when it comes to forests and carbon sequestration.

0930

On July 14, 2008, the Premier's media release stated, "Permanently protecting these lands will also help a world wrestling with the effects of climate change, as they are a globally significant carbon sink." The accompanying backgrounder went on to state, "Ontario Fights Climate Change by Protecting Carbon-Absorbing Forests: Ontario's far north boreal forest is one of the last, great, undeveloped spaces on the planet and a vital carbon sink."

What the Premier's statements failed to mention is the following. Firstly, protecting forests, as proposed by the Premier's press release, is not the preferred method of carbon sequestration. Sustainable forest management, including harvest and renewal activities, can contribute to the mitigation of climate change to a greater extent than protecting forests.

Please don't take my word for it. According to the Intergovernmental Panel on Climate Change, the IPCC, considered by many to be the authoritative voice on issues related to climate change, "In the long term, a sustainable forest management strategy aimed at maintaining or increasing forest carbon stocks, while producing an annual sustained yield of timber, fibre or energy from the forest, will generate the largest sustained mitigation benefit." In an article published in the *Forestry Chronicle*, scientists concluded, "If one is truly concerned about the risks to the environment from climate change, then the case can be made that logging of sustainably managed forests should be encouraged." Even the Ministry of Natural Resources recognizes the value of forestry and forest products, stating, "The carbon stored in Ontario's forest products this century is 4 to 5 times greater than the carbon stored in our forests."

The protectionist approach outlined last July, which is clearly embedded in Bill 191, is not consistent with science or even with the government's own objectives regarding climate change. When it comes to forests and forestry, setting aside 50% in parks is not the best means of combating climate change.

Secondly, the Premier's announcement has a distinct focus on forests and the need for their protection in order

to sequester carbon, as opposed to other ecosystems, most notably peat lands. Yet, according to findings of the Ministry of Natural Resources, the carbon stock, or carbon locked up in peat lands in the far north, is nine times greater than the carbon stored in Ontario's far north forests. In addition, the far north peat lands sequester 11 times more carbon on an annual basis than far north forests.

The unscientific, unsubstantiated objective of permanently protecting over 50% of the northern boreal region is a significant concern to the OFIA. Our association is also very concerned that the government's commitment to protect over 50% of the northern boreal region is very consistent with the objectives of numerous Toronto-based environmental campaigners.

The government of Ontario took the advice of certain environmental special-interest campaigners during the development of the Endangered Species Act. Again, don't take my word for it. These environmental campaigners, with support and funding from the Ivey Foundation, have described how they controlled the development of the Endangered Species Act in a document titled *The Making of Ontario's New Endangered Species Act: A Campaign Summary Report*, which is included in your package. The government of Ontario listened to these groups and passed an act that cannot be implemented. I urge you not to make the same mistake. Do not continue to support the objective of these Toronto-based special interests.

The government needs to reconsider its unscientific, unsubstantiated position to permanently protect a minimum of 50%, or 225,000 square kilometres, of the northern boreal region and replace this with a more pragmatic approach that provides First Nations with an opportunity to lead far north land use planning, free from artificial constraints.

Some of you may see any industry opposition to the minimum 50% protection as a lobby effort to open up the entire northern boreal to development. Some special interests may even try to tell you this directly. This is a false sentiment. In fact, none of our members currently operate in the far north.

What the OFIA does support is an approach to land use planning in the far north that truly recognizes the interests of First Nations, the development of a land use planning process that is First Nations-led and that not only allows First Nations to determine what is to be protected but also allows them to determine what "protection" means. First Nations must play a leading role in setting both economic and conservation objectives. The unilateral imposition of a minimum of 50% permanently protected parks is not consistent with this vision, and again, is not supported by the OFIA. It sets a dangerous precedent that will unnecessarily frustrate any desire for sustainable economic development or the true conservation of the region.

Given our concerns, the OFIA does not support Bill 191. Further, based upon the opposition provided by NAN through their resolution and communications to the

government, the OFIA supports NAN's request for the withdrawal of Bill 191.

I would like to thank the committee for your time and for the opportunity to be here today. I am happy to provide clarification on any of our positions and answer any questions you may have.

The Chair (Mr. David Oraziotti): Thank you for your presentation. Mr. Bisson, questions?

Mr. Gilles Bisson: I guess my first part would be a question. For the OFIA to take this position is a bit—how would you say it?—not in the norm. Normally, the OFIA is known as an organization that tries as much as possible to work with the government of the day to make happen what has to happen in the public policy realm in a way that makes some sense. Am I detecting a strong sense of frustration here?

Mr. Scott Jackson: You are indeed, and I do appreciate the comment. We do have a very strong history of being proactive, working with government and other groups where there is informed, engaged, open and transparent dialogue. I think a high degree of the frustration you're hearing today is that there was absolutely no dialogue with one of the fundamental pillars of this legislation, or this proposed bill, which is the unilateral decision to protect 50% in permanently protected parks. There was no discussion. There was no discussion with the far north advisory council around this. It was taken as a given. It was handed down to us as a decision, and we were left to deal with it. So, yes, there is certainly an element of frustration.

Mr. Gilles Bisson: I know from discussions I've had with First Nations organizations such as NAN that they're fairly upset because they see that part of the province as being the territory that they control and the government has unilaterally, as you would say, implemented a process that at the end of the day they're not going to be in control of. It's refreshing to see that you're actually supporting the First Nations in the sense of having good land use planning.

If this doesn't work, what would you see in its place? I think we're all after the same goal: You want to have sustainable development, you want to protect the environment and give First Nations the ability to have economic development. What model would you choose if you had to choose a model?

Mr. Scott Jackson: I think you need to start from a position of withdrawing the decision to permanently protect 50%. I don't think you can tell any organization, association, community or individual that they have full say in land use planning when the starting position is that over half of it will be off limits and they're not allowed to make a decision on it. So certainly you need to withdraw that. There were some recommendations that did come out of the advisory council, such as an independent board with at least half First Nations representation, which would, if you were willing to start with a blank slate, I think, give them an opportunity to have the input that they require, both at a regional and a community level. But I think what we need to do here, in

support of NAN's resolution, is withdraw Bill 191 and start with some open, transparent dialogue as to how to approach this—

Mr. Gilles Bisson: And if you had to say how much of the territory that we're talking about is undeveloped now, in percentages—

Mr. Scott Jackson: I don't have those statistics at my fingertips.

Mr. Gilles Bisson: Would 99.9% be close enough?

Mr. Scott Jackson: Yes, I believe so. But again, the forestry sector in Ontario, the OFIA, does not currently operate in the far north.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. Questions? Mr. Mauro.

Mr. Bill Mauro: Mr. Jackson, thank you for being here today. We appreciate your comments.

I'm sure the OFIA is aware, and as Mr. Bisson has just referenced in his last comment, that currently in what is described as the far north there is almost no economic activity occurring on almost all of the land. I think it's fair to say that, and I think most people would agree. So what we see happening here through this proposed legislation is an ability to put in place a formal process that's going to allow economic development to occur on a significant portion of land in the far north.

I think one of the things that we all hear on a regular basis, as members in all parties, I'm sure, is that what industry is looking for when they're looking to expend funds—especially when you think about mining in a preliminary way, long before they have an ability to recoup any of their investment, if they ever will recoup any of their investment—is some certainty on a go-forward basis in terms of their ability to establish an ongoing business concern. So what we see as occurring here through the community land use planning process is creating a vehicle through which that certainty will be able to evolve for businesses on a go-forward basis on 50% of the land up there. I'd be interested in your comments on that, given that currently, as it stands, there is basically no activity occurring in the far north.

Mr. Scott Jackson: Thank you for the question. I guess I am a little bit confused. I do not see anywhere in either the Premier's announcement or the legislation where it says 50% of the land will be open to development. That's not what it says. It says a minimum of 50% will be permanently protected. On top of that, what happens when you implement, if you can implement it, your Endangered Species Act? How much land does that take away from the remaining, say, 49%?

I'm also concerned that outside of the 50% minimum permanent protection, there are no economic objectives stated in the legislation. In fact, in the list of objectives, economic development comes last, and there are no numerical targets associated with it. I would think that an approach that is truly directed at economic development would at least have some objectives or targets in terms of what the government wants to achieve in terms of economic development. The legislation does not.

0940

I do agree that certainty is required to a degree, but if that certainty is that there really is no possibility, or limited possibility, for economic development, I would not see that as success.

Mr. Bill Mauro: You spent a fair bit of time in your deputation talking about the percentage of land available. When we think about it in the context of mining, even if tomorrow there were to be 10 mine sites established that could go into production next week, mining on a general basis—and we're all very supportive of it. I can tell you, coming from the community of Thunder Bay, it's a staging point for much mining activity. It's a strong economic contributor to our community. But most people recognize that mining establishes and requires a very small footprint. We can look at the De Beers mine, we can look at several—I apologize; I'm forgetting the name of the one, the Mussel—

Mr. Gilles Bisson: Musselwhite.

Mr. Bill Mauro: The Musselwhite mine, thank you. They require a very small footprint when it comes to what they require in terms of a percentage of a land mass. So when we're thinking about what may come to be probably the three primary economic drivers in the far north—forestry, mining and water power—I'd be interested in your comments on that, recognizing how little land the mining situation would actually require.

Mr. Scott Jackson: I do not represent the mining association or any mining company or organization, so I guess my only comment to that would be that, yes, the end result, the actual mine, may have a very small footprint, but the precursor to mining, which is prospecting, I'm given to understand, actually requires access to quite a lot of land base. If you were to take the Premier's commitment to permanently protect 50% and only allow tourism and traditional aboriginal uses, what does that mean for prospecting? I think you're severely curtailing it.

With respect to forestry, it can cover quite a large land base. I think we've demonstrated in the area of the undertaking that we can implement forestry in a very sustainable manner. We have platinum-standard, world-class standards for forest management, and we do so without the permanent protection of 50-plus per cent of the land base.

The Chair (Mr. David Oraziotti): Thank you. That's time for that question. Mr. Barrett.

Mr. Toby Barrett: Thank you to the Ontario Forest Industries Association. I hear what you're saying, that science and economic development seem to have taken a back seat to politics and the advice of some lobbyists.

You indicate something that's very important, as I understand, for this government: the whole issue of carbon dioxide. You're suggesting that the two-by-fours and two-by-sixes in my house sequester four to five times the carbon that's in the living forest. Further to that, there is certainly direction from this government to replace some of the electrical generation from coal with pelletized wood.

This kind of legislation looks like it's setting a pretty serious precedent to restrain access in this part of Ontario. Is this worrisome at all, as far as having you people do what you do, which is plant trees, harvest trees? I know you know how to pelletize. Is there concern there, as far as you know?

Mr. Scott Jackson: I think there is, as I mentioned in my presentation, a concern that this sets a very bad precedent. We are discussing the far north, but I do think it will put significant limitations on opportunities up there.

I certainly was suggesting that science is on the side of sequestering carbon in forest products, but I was certainly more than suggesting; I was citing actual internationally recognized scientific advice. So I appreciate the comment that it was me, but it was also some fairly reputable, recognized organizations that believe the same thing.

It has been a concern of ours since the get-go that whenever carbon is mentioned, the words "protection" and "forest" tend to go hand in hand. That's where we see a disconnect between science and the government's messaging. So, yes, that is definitely a concern as well.

Mr. Toby Barrett: I think Mr. Hillier—

The Chair (Mr. David Oraziotti): Thank you. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much for a clear and concise presentation.

There are a few things that I'd like to mention. First off, I think you've captured it clearly: There are no economic objectives to this bill. There is an idea of protection, but we really don't understand what that protection is, other than it is going to prevent opportunities for somebody.

I want to get your comment on this. We see today that AbitibiBowater has shut down a few more machines up in the north; quite a number of people are out of work. They've cited higher fibre costs. This bill—and I think we need to take a look at the whole context, because you mentioned the endangered species as well. Do you see this sort of bill—these bills that are in front of us now and those that have been passed—increasing the regulatory costs and increasing the fibre costs, putting our forest industry out of work in the north? Is that a significant contributing factor?

Mr. Scott Jackson: Thank you for your question. Given the fact that this proposed bill focuses on the far north, where we do not currently have operations, I do not see it as having any immediate direct impacts on fibre costs in the area of the undertaking.

Mr. Randy Hillier: I should interject for one minute. I know that you're not in there now, but you are also limiting your marketplace and your opportunities—I think you used the words "limiting opportunities"—down the road. So I want to look a little bit beyond just today for the forest industry.

Mr. Scott Jackson: I wouldn't qualify them as "our" opportunities. I would qualify them first and foremost as First Nations opportunities. Based on experience, would the unilateral imposition of this 50% permanent parks—

and I should mention that the announcement was also in interconnected areas. Should it be implemented, it will depend partially on how it is on the ground, but I have very little doubt that it will increase costs for anyone who desires to operate in those areas, beyond what it would otherwise.

As an example, if this is interconnected areas, there is often a lot of resistance to allowing roadways, even limited access, through those areas to connect communities with their markets. If you have to go around these parks, there is a significant additional cost. Road construction is a very high cost to the industry. I do think that from the get-go, out of the gates, this bill is setting up forestry costs to be higher than they need to be, for sure.

Mr. Randy Hillier: Thank you. I just want to add that it's interesting as well that you used words that we don't often see in democracy. Words such as "unilateral," "arbitrary" and "no dialogue" are not words that we generally associate with democracy, and we need to take that into consideration.

Thank you.

The Chair (Mr. David Oraziotti): Thank you for your time and for coming out for your presentation.

Mr. Scott Jackson: Thank you very much.

JOHN EDMOND

The Chair (Mr. David Oraziotti): Our next presentation: John Edmond. Mr. Edmond, good morning. Welcome to the Standing Committee on General Government. You have 15 minutes—

Mr. John Edmond: I'm sorry. I'm having a little difficulty hearing, Mr. Chairman.

The Chair (Mr. David Oraziotti): I said good morning and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. If you could state your name for the purposes of Hansard, you can begin when you're ready.

Mr. John Edmond: Mr. Chairman, thank you very much for giving me the time this morning. I see that I'm the only unidentified presenter. I didn't mean to be a mystery guest, and so I'd better identify myself immediately. I believe you may have my brief by now, but I am a lawyer with a professional interest in public law, which includes constitutional and aboriginal law. I practise as a sole practitioner in Ottawa.

I want to make some comments—and I'm very honoured, by the way, to be amongst this august company that I see on the agenda today. It's very flattering to be included.

Mr. Gilles Bisson: You may not feel that way after we ask questions.

Mr. John Edmond: We'll see what happens then.

I have filed a brief, and I understand that Mr. Day has kindly distributed that to you all, although of course you won't have had a chance to look at that. So what I'm going to say today will highlight the points in that brief, and I hope you'll have a chance to review the brief at

your leisure, not that I expect you'll have much of that over the next week or so.

0950

First of all, I'm speaking only to Bill 173 and I'm speaking only to the aboriginal consultation portion of that bill, which is a very significant part of the bill. My perspective is that of someone, as I say, who has some familiarity with public law and the consultation and accommodation requirements that have been set down by the Supreme Court. I don't claim expertise in the mining industry, and I leave the question of the effects of this bill on the industry to those with that expertise. I'm sure you'll have no shortage of sound advice on that score, both from the industry, from First Nations and Metis groups, and from others.

I also should point out that I'm here on my own; I represent no client in coming here, and no interest. My interest is to offer what I hope is constructive commentary on this bill so as to ensure that the bill—I hope this doesn't sound too pretentious, but I hope to see that our laws are clear, workable and in accordance with constitutional principles. On that score, as regards the consultation aspect of this bill, I think the bill still needs some work.

The starting point of the duty to consult is this: The Supreme Court has told us that there is a duty to consult with aboriginal peoples before any step is taken that might interfere with, for example, a First Nation's treaty right to hunt, trap or fish on their traditional lands. By "traditional lands," I mean the lands encompassed by the treaty to which they are a party. I assume this is the reason that so much of Bill 173 is devoted to the duty to consult; it's a very major portion of the bill.

I think there's room for some improvement or significant clarification in this area. The difficulty is this, and I think it can be stated very briefly: On the one hand, the Supreme Court of Canada has made it clear that the duty is that of the crown and cannot be delegated; that is, it can't be delegated to third parties—to industry proponents, applicants for mining development, exploration and so on. The bill does seem to acknowledge that in certain places, but it goes on, in my respectful view, to do just what the court says that it should not; namely, to require proponents to do the consultation.

The danger in this is that, in my view, it will lead to serious uncertainty as to whether consultation has been done and done properly. In most cases, even when things aren't done in complete conformance to the law, they often go smoothly, but the fact is that when things unravel, that's when the law comes into play and difficulties arise. I think there is an opening for that in this bill with respect to the fact that, in my view, the bill's approach to consultation does not find support in the Supreme Court decisions.

I don't want to read you anything lengthy, but I will read you, if I may, just the critical part of one of the Supreme Court judgments that govern this area of the law. The court here had to address the question, "Is the duty to consult that of the crown or industry?" and they

said it is the crown that owes the duty to aboriginal peoples. "The crown alone remains legally responsible for the consequences of its actions and interactions with third parties that affect aboriginal interests. The crown may delegate procedural aspects of consultation to industry proponents seeking a particular development," and I emphasize "procedural aspects." That's actually a phrase that is picked up in the legislation in section—I believe it's section 82(9) where the authority for the regulations lies. "The crown may delegate procedural aspects of consultation to industry proponents.... However, the ultimate legal responsibility for consultation and accommodation rests with the crown. The honour of the crown cannot be delegated." "Honour of the crown" is a term of art that has been around in aboriginal law decisions for over 100 years, and the honour of the crown cannot be delegated. This is the basis for the duty to consult. They go on to say that third parties "cannot be held liable for failing to discharge the crown's duty to consult and accommodate."

So procedural aspects may be delegated, but when it comes, I suggest, to understanding the concerns of the aboriginal group in question and attempting to find an avenue to reasonable accommodation with those concerns, the crown must be there, it must be present, it must be engaged. This seems to have been recognized in that part of the bill which deals with regulation-making, as I mentioned earlier. It says that regulations may be made—and I'll just excerpt it—"requiring consultation with aboriginal communities in the prescribed circumstances and governing all aspects of aboriginal consultation under this act," and then it goes on, "and providing for the delegation of certain procedural aspects of the consultation."

So far, so good. But when it comes to the operational parts of the bill, I've identified five areas in the various stages of the development of a mine, from an exploration plan to the development to the mine production.

First of all, an exploration plan must include prescribed community consultation. This is in section 40. I have to acknowledge it isn't clear, and the reason it isn't clear is that this statute is drafted in the passive: It never says who is to be responsible for the consultation, but it seems to me that this is not simply a bill drafted to direct government as to what to do. So I take it that when it talks about "prescribed circumstances," it's talking about what a proponent will be required to do. So it appears to me that the proponent may be held responsible for the entire consultation.

A second place is also in section 40. For an exploration permit, the director of exploration—this is a new position—is to consider "whether aboriginal consultation has occurred in accordance with any prescribed requirements." I take it again that he or she is to determine whether the proponent has done the consultation fully and correctly. Again, because of the passive, we don't know that for sure, but I think it's a fair inference.

Similar provisions apply to mine rehabilitation in section 57 and to advanced exploration and commencement of mine production in section 58 of the bill.

If the intent of this bill is to encourage relationship-building by industry, I think that is highly commendable. I actually published an article a couple of years ago about obtaining approvals. It was a presentation to the Corporate Counsel Association of the Canadian Bar Association. I said that it's important for an industry proponent to be there with the First Nations right at the outset; the first thing they should be doing is relationship-building. But that's not to be confused with consultation. The consultation, as I interpret the—well, it's not an interpretation; it's very clear from what the Supreme Court said, which I read you, that the duty for consultation can't be delegated.

It's not a mere academic concern. For example, there's a case now, as I understand it, in Ontario where relationship-building by a proponent was attempted and it didn't succeed in northern Ontario. My understanding is that Ontario is currently the object of a lawsuit with significant damages claimed for lack of consultation by the government. I'm saying nothing about the merits of the case, but this is the kind of problem that can arise.

I give an example in my brief of a situation where only the proponent may have been involved in the consultation, an agreement was reached, everything seemed fine for a while and then it goes sour for some reason—the economics change, perhaps—and the First Nation wants out. I think it would be possible for a court to say, "There has been no consultation and the agreement is void." I don't have a precedent for that, but I think that's certainly a possible outcome. There may be another case where the proponent has done everything to consult and offer accommodation, but the First Nation or Metis group wants no part of it and is objectively being unreasonable. What the court has said in those circumstances is that approval could be granted; there's no veto.

Mr. Chairman, am I running out of time?

1000

The Chair (Mr. David Orazietti): You have a couple of minutes.

Mr. John Edmond: Thank you. There's no aboriginal veto on these, once a reasonable accommodation has been offered. But if the proponent is involved in the consultation, or does the consultation, there is no recourse, in my view, because in fact there has been no crown consultation, and the result could be a veto by default.

There is an argument, of course, that if the proponent is to benefit, the proponent should bear the burden. But the fact is that before approval is given, the crown must discharge its duty to the aboriginal group potentially affected, and this is anchored in the honour-of-the-crown doctrine owed to aboriginal people, the reason being—I mean, it's very basic. It's the crown that signed the treaties and it's the crown that has the duty, then, to ensure that the treaty rights are protected before approving conduct that may affect them.

Now, this workload on the crown, of course, could add significant workload to government, but I suggest that if Bill 173 is an attempt to pass that burden on to third parties, the result will be uncertainty and undue risk for both proponents and First Nations.

In my brief, I indicate that these concerns could be resolved if the bill provided first, by way of clarity, that any aboriginal consultation that may be prescribed for a proponent to conduct shall be limited to procedural aspects, not just in the regulations but in the bill itself; and secondly, that the minister shall be responsible for the conduct of consultation that has not been delegated to a proponent.

That's my main submission, Mr. Chairman. If I have another moment or two, I just have two subsidiary points—

Interjection.

The Chair (Mr. David Oraziotti): All right.

Mr. John Edmond: I just have two subsidiary points. One is having to do with the purpose of the bill. The words "including the duty to consult" are found in the purpose of the bill, as if they were part of section 35 of the Constitution Act. They are not. This confuses, I suggest, what is written in the Constitution with what is stated in judicial decisions. I think that needs attention. This, by the way, is to be found also in section 3 of Bill 191; same problem.

My final additional point has to do with the general prohibition against litigation arising from the Mining Act. There is an exception to this with respect to consultation. The Supreme Court has said that third parties can't be held liable for failing to discharge the crown's duty, so this liability would appear, if that Supreme Court statement is to stand, to impose liability only on the crown.

Thank you very much.

The Chair (Mr. David Oraziotti): Thank you for your presentation. Government's questions first. Mr. Brown.

Mr. Michael A. Brown: Thank you, Mr. Chair. I appreciate very much you coming and providing us with this legal advice on the bill. I want to assure you that the government is working diligently to take all deputations and considerations into account.

As we move forward, some of the territory that we're treading on is new for governments in Canada, or anywhere else, for that matter. We are cognizant that we need to get this right. So we appreciate all your comments, and we'll clearly give them consideration.

Mr. John Edmond: Thank you very much, sir.

The Chair (Mr. David Oraziotti): Okay, thank you. Mr. Barrett.

Mr. Toby Barrett: Thank you, Mr. Edmond. You refer to Treaty 9, which covers much of the far north, and the reference with respect to the traditional lands, or the lands that were ceded or surrendered—they still have the right to pursue hunting, trapping and fishing and, as I understand it, basically have no say with respect to mining or lumbering or anything else unless it were to impact hunting or trapping or fishing.

Has that treaty—and it is, I don't know, 120 years old or 100 years old; I'm not sure. Has that treaty been opened up at all since it was first written? Has it been changed? Or does this legislation affect that treaty somehow?

Mr. John Edmond: No, I don't believe so. The treaty—I can't recall the exact dates. The only change is that there was adhesion to the treaty for the most northerly portion at a later date, I believe around 1930. But apart from that, no, certainly the bill can have no effect. It's not possible for government to change the treaty by legislation. The treaty is in fact protected in the Constitution by section 35.

Mr. Toby Barrett: I guess one thing that would affect this—as you've indicated, section 35 of the Constitution Act, 1982, the charter, as far as duty to consult. On the last page here, you referred to a court of appeal in the Yukon where there's no doubt that the duty to consult is recognized as a constitutional duty. However, it concludes that it is not a constitutional right. I don't understand what that distinction would be. Then again, when we're talking about duty to consult, this is strictly with the crown, eh? This is not, say, with lumbering companies or mining companies?

Mr. John Edmond: That's correct. This was a crown matter, so it isn't directly relevant. It's only relevant on the point that the implication of the duty to consult is to be found in section 35. My only point is that the way that the purpose is written in the bill—section 2 and section 3 of Bill 191 indicate that the duty to consult is to be found in section 35. It suggests that, and I just think that needs clarification or redrafting.

Mr. Toby Barrett: And this duty to consult would be strictly either the federal government or one of the provincial or territorial governments—

Mr. John Edmond: That's correct. It is a crown duty, as the Supreme Court has set it out. It's interesting: Consultation is something that has been around for a long time, and duties to consult, in a broad sense, but it only became focused on resource industries with a decision in British Columbia called Haida and another called Taku River Tlingit, where there were proposals made by proponents—it was a forestry licence—and then this law was carried over to apply to treaties, which is the case in Ontario, with respect to Treaty 8 in northern Alberta in 2005 in the Mikisew Cree case.

Mr. Toby Barrett: Does it specify to consult with whom? Of course we would assume either elected or traditional chiefs, but would it be other organizations or factions—

Mr. John Edmond: I think it's clear that there's no duty to consult with every First Nation in the treaty. I think it would be absurd to suggest that you have to consult with 31 First Nations if you're going to ask for activity near one First Nation. In the Mikisew Cree case, there was a road to be built. It wasn't going to be on the reserve, but it was going to be near the reserve. It was going to affect several traplines, I think, belonging to members of that band. The Supreme Court doesn't make it absolutely clear, but I think it's reasonable to say that the duty to consult requires the crown to consult with the band that is reasonably affected, or it may be two or three bands, if they in fact—I mean, it's a matter of fact: Do they hunt, trap or fish in the area that's in question? If

they're a long way away and they have no connection with that piece of land, the mere fact that they're on the treaty does not suggest that they—

The Chair (Mr. David Orazietti): Mr. Edmond, I'm going to have to stop you there. Mr. Bisson, if you have a quick question.

Mr. Gilles Bisson: I want to thank you for your presentation. I thought your point in regard to clarifying the duty to consult was one of the more concise ones I've heard in a long time.

My quick question is, if you're saying, then, that the crown—and I agree with you—has a duty to consult and can't offload that to somebody else, if we do prescribe procedurally, through regulation, what can be done by industry, is that still subject to litigation, in your view?

Mr. John Edmond: I just think this needs to be in the bill and not just in the regulations. Certainly if—these are all in the passive voice—the regulations then went on to say that the crown or somebody in northern development and mines has to consult, then I suppose that my criticism falls. But I think this should be clarified in the bill.

Mr. Gilles Bisson: Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation and for coming in today.

1010

WORLD WILDLIFE FUND—CANADA

The Chair (Mr. David Orazietti): Our next presentation is the World Wildlife Fund of Canada.

I just want to mention that down the hall to the right, committee room 1 has been set up as an overflow room for this room. The proceedings in here are televised, so if anybody wanted to be in that room, they could watch. Feel free to use that room if you'd like. That's committee room 1, out these doors, to the end of the hall on the right.

Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation, five for questions. You can start by just stating your name for the purposes of Hansard. Begin when you like.

Mr. Monte Hummel: Thank you, Mr. Chairman. My name is Monte Hummel. I'm president emeritus of World Wildlife Fund—Canada, better known as WWF, which is not the World Wrestling Federation. My presentation is regarding Bill 191.

By way of introduction, I thought I would make some brief comments about who WWF is and who I am.

WWF is the largest conservation organization in the world, with five million supporters worldwide and a global network active in over 100 countries, including Canada. Our ultimate goal is to build a future in which humans live in harmony with nature by, first of all, conserving biological diversity; second of all, ensuring the sustainable use of natural resources; and thirdly, reducing pollution and the wasteful use of energy.

WWF—Canada has 150,000 active supporters right across Canada and offices in St. John's, Halifax, Ottawa, Toronto, Edmonton, Vancouver and Prince Rupert. We

have worked for over 40 years in the Arctic and in the northern regions of the provinces. We are not opposed to hunting or trapping or to industrial development such as mining, forestry and water power. We have worked with First Nations, Metis and Inuit to support initiatives, especially conservation measures, that are championed and led by them.

I personally was raised in the bush in northwestern Ontario, in a hydro camp north of Kenora, at Whitedog Falls. I worked my way through school as a canoe and fishing guide on Ontario's so-called far north Arctic watershed rivers flowing into Hudson Bay and James Bay. I'm a forester by training. For 30 years, 26 of those as CEO, I have been WWF's most senior contact for First Nations, Metis and Inuit communities and I represented WWF on the minister's far north advisory council.

WWF's overall position on Bill 191 is as follows: We strongly support Ontario's far north initiative as originally envisaged by Premier McGuinty and announced by him in July 2008. However, we believe that Bill 191 needs to be seriously amended to deliver on the Premier's vision and promise, especially his promise regarding a new relationship with First Nations. In our view, if amendments are not made to the bill, the very people who are needed to lead this exercise will not have the authority to do so, and it will fail.

WWF supports Bill 191 provisions to protect at least 225,000 square kilometres of the far north, provided First Nations lead in the identification of these areas and share responsibility for their management, which is not currently assured in the bill.

WWF supports Bill 191 provisions that both economic development and conservation measures be pursued through community-initiated land use plans consistent with a regional land use strategy, again, provided First Nations lead in developing these plans and the strategy and provided they are properly resourced to do so, neither of which is assured in the current bill.

In order to accomplish the above, WWF strongly supports the far north advisory council's recommendation for the establishment and functions of a planning board, with equal representation from the government of Ontario and First Nations, which is also not assured in the current bill. I've attached to our submission a copy of the far north advisory council's report. I urge committee members to read that report because it represents a rather remarkable consensus of normally very diverse players. Chris Hodgson, the president of the Ontario Mining Association, and I have co-authored editorial comments in support of the advisory council's report.

Some details: Virtually all of the concerns outlined above were also outlined in a July 16 letter to Premier McGuinty from the Nishnawbe Aski First Nation over the signature of Grand Chief Stan Beardy. I've attached that letter as well. It's on the public record now. The Grand Chief specifically highlighted (1) First Nations leadership in planning, (2) First Nations leadership in protection, (3) an independent board, and (4) funding, or what I refer to as being "properly resourced." WWF

supports each of these four points in principle, although we hope that Bill 191 will be amended and changed to accommodate these concerns rather than be withdrawn immediately as requested by NAN.

Grand Chief Beardy cross-referenced these four points—the four points in his letter to the Premier—with the prior consensus report of the far north advisory council, so there is a great deal of overlap between NAN's concerns and the recommendations of that council, which also recommended that each of them be addressed in Bill 191. It is therefore important to note that these four concerns are not just those of NAN and conservation groups, but also those of a body representing the mining industry, prospectors, tourism and water power. I've excluded forestry because OFIA made it clear earlier that they have never supported this initiative overall.

At this hearing, WWF wants to simply and clearly signal our concerns with Bill 191 to the standing committee. If it would be helpful to you, we would be pleased to subsequently work with our colleagues to suggest specific clause-by-clause amendments to the bill in order to address these concerns. These are not cosmetic changes; they are necessary changes, as we believe the success of the bill and the Premier's initiative hang in the balance.

Finally, WWF regrets that the standing committee hearing schedule did not include any far north community locations and that the dates conflict with NAN's general election. This sends the exact wrong message to those communities most affected regarding how seriously their input is regarded. If the dates of these meetings cannot be changed, we strongly urge that additional, more appropriate dates and locations be added to at least make it possible for Nishnawbe Aski First Nation communities to participate if they so wish.

Thank you.

The Chair (Mr. David Oraziatti): Thank you very much for your presentation. Mr. Barrett, go ahead.

Mr. Toby Barrett: Thank you for the presentation, the World Wildlife Fund. I concur with what you're saying with respect to the far north. As I understand—I won't be travelling with this committee, but I don't think they are going to the far north.

Mr. Monte Hummel: No far north communities as such; what I would call the near north.

Mr. Toby Barrett: Yes. The document here—consensus, advice to MNR. This consensus—and I know you mentioned some of the people who were involved in this process. Again, I guess the same kind of question: How many people were involved? I think back to an Ontario government initiative going back probably 13 or 14 years ago—Lands for Life, the Living Legacy process, which I was involved in somewhat. It seemed to involve thousands of people, perhaps tens of thousands of people. It was more near north—a higher population base to draw on.

As far as this consultation, or any work done by MNR with respect to the far north, how many meetings were held? Were there public meetings held? Was there a road

show? Was there citizen participation? Was there community involvement or was it the people listed on this page?

1020

Mr. Monte Hummel: Are you talking about the advisory council or the whole overall far north—

Mr. Toby Barrett: I would say the whole overall consultation process. How broad was it? What areas were visited?

Mr. Monte Hummel: That's a question best put to MNR. I know that this idea percolated around for a couple of years. I'm not privy to everybody whose advice was sought or who was consulted. When the initiative was announced, there was support, some of it lukewarm, some of it strong, from various sectors. On the advisory council itself, I think there was a feeling that MNR needed to recruit a representative body of stakeholders, and so you can see those who were represented there. I think it's pretty representative. There were 14 people or so on the advisory council, but of course not First Nations, who wanted to have a separate table, a government-to-government relationship. So they had a separate table; however, we had a common Chair for both groups. NAN representatives were invited to sit in on all of our sessions, and for most of them they did, and we had a couple of joint meetings as well. Although there were two separate streams, we tried to keep the two streams aware of what was going on. That's after the Premier's announcement in July 2008. That's the part of the consultation, or the public involvement, that I was most involved in, so that's really all I can speak to.

The Chair (Mr. David Oraziatti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Just a quick question, here: We've heard that this advisory council came after the Premier's announcement, or these consultations came after the announcement and after the introduction of the bill—

Mr. Monte Hummel: No, excuse me, it was after the Premier's announcement but leading up to the introduction of enabling legislation.

Mr. Randy Hillier: So my question is, I've heard from others, and we heard today as well, that a number of groups were not included in the discussions in the run-up to that announcement. So I'm just going to ask you, was WWF consulted in the preparation of this bill?

Mr. Monte Hummel: The original announcement by the Premier?

Mr. Randy Hillier: Yes.

Mr. Monte Hummel: Yes, we were.

Mr. Randy Hillier: You were. So clearly, then, some groups have been and some have not.

Mr. Monte Hummel: Yes.

Mr. Randy Hillier: Thank you very much.

The Chair (Mr. David Oraziatti): Mr. Prue.

Mr. Michael Prue: Gilles Bisson had to go outside for a moment, so bear with me. I'm not a member of the committee, but I am the NDP finance critic. I'm going to ask some questions. Stan Beardy's letter talks about

funding and the necessity of some \$100 million over five years in order to adequately allow First Nations to participate. In your view, is that sufficient monies?

Mr. Monte Hummel: No.

Mr. Michael Prue: Is there sufficient monies in the bill?

Mr. Monte Hummel: No, there's been no commitment of funding within the bill or outside the bill for this exercise.

Mr. Michael Prue: Has your group advocated funding of First Nations?

Mr. Monte Hummel: Yes, we have, but I want to make clear it's not just us. The advisory council very strongly said that if there isn't funding for this, it isn't going to happen. One of my big messages today is there are some very common themes here and a remarkable consensus across different groups about what needs to be done here, and funding is certainly one of them. I don't think you'll find anybody involved in an advisory group who wouldn't agree that without funding, this isn't going to happen.

Mr. Michael Prue: Is that \$100-million figure adequate, in your view?

Mr. Monte Hummel: That would certainly get the exercise going for the first two to three years in terms of funds to develop land use plans. What's envisaged is a mosaic of land use plans. They won't all be done simultaneously; some are under way already, so they're all on a different track, and what the Premier indicated was an outcome that he wanted to see on a regional basis for the whole of the far north. But that outcome was to be determined by and defined through the community land use planning process by the people who live there. It was not imposed or dictated. They weren't told where that area had to be.

Mr. Michael Prue: That seems to be part of the difficulty, if I'm reading what you had to say and what Grand Chief Beardy had to say: The 225,000 square kilometres, there's no real knowledge in the NAN group as to where that might be or how that might impact the traditional lands.

Mr. Monte Hummel: That's because it's not known where that area is. That's up to them to determine. They do not feel that they have—well, I can't speak for them, but we don't feel they have the authority or the role they need to have to do that in this exercise.

Mr. Michael Prue: Apart from committing funding, what other changes absolutely need to be made in the act? I would think one of them would be the independent board—

Mr. Monte Hummel: Yes. The planning board, I think, is the single most important change. It really is an umbrella concern that I think would help address a number of NAN's concerns—virtually all of them except the money. It's not stipulated in the act. I think it needs to be, as we've indicated, 50-50 representation. It needs to have the lead responsibility for developing the regional strategy. It probably should be the distributor of funds. It should be determining whether these various community

land use plans are consistent with the principles of the regional strategy and give First Nations true leadership in both the economic development and protection side of the far north initiative.

Mr. Michael Prue: Thank you very much.

The Chair (Mr. David Orazietti): Okay, that's time. Mr. Mauro, go ahead.

Mr. Bill Mauro: Mr. Hummel, thank you for your presentation this morning. I missed the name of the community north of Kenora. What was that?

Mr. Monte Hummel: Whitedog Falls. It's a hydro camp. My dad used to work for hydro.

Mr. Bill Mauro: Good to talk to another northerner. People probably don't realize that if you jumped in a car, it would take you 15 hours to drive from Toronto to Thunder Bay, and then from Thunder Bay to Kenora is another good six hours, and then to Whitedog Falls is how far? Is there even a road?

Mr. Monte Hummel: Yes, and you're still in the banana belt as far as the people of Attawapiskat are concerned.

Mr. Bill Mauro: Exactly. It's a big place that we're talking about.

Mr. Monte Hummel: Yes, it is.

Mr. Bill Mauro: I do have a few comments before a question or two. You spent a bit of time talking about resourcing, and in the 2008 budget—I think it was the 2008 budget—we did commit, as you're probably aware, \$30 million for this process.

Mr. Monte Hummel: Yes.

Mr. Bill Mauro: I do think the legislation or somewhere speaks to our willingness to continue to work with First Nations communities to build capacity around the land use planning process on a go-forward basis. I don't think you're ever going to see specifically stated in legislation an amount of resource tied to an initiative like this, so this is not at all unusual. I don't think any government at any time has ever done that in their legislation. The \$30 million was committed in the 2008 budget, and we're looking to build capacity with First Nations on a go-forward basis to enhance that.

It's important as well to mention, on the consultation piece, that this is first reading. This is very unusual, what we've done as a government, in terms of bringing this bill forward and referring it to committee for first reading. So we feel like this is sort of an extra add-on process or piece to the process that's going to allow for a broader opportunity for people to have their input.

I'm going to read to you as well section 16. There was a bit of chat about the planning board. Section 16 of the bill states, "The minister shall establish one or more bodies to advise the minister on the development, implementation and co-ordination of land use planning in the far north in accordance with this act." The subsection after states, "When establishing a body ... the minister shall consider what role First Nations should play in the establishment of the body." It has always been our intention to have consensus in future decision-making, understanding that this is enabling legislation.

I would like to ask you, however: Within the legislation, do you think that we should perhaps be amending this with a clause to allow for further interim development to occur as community land use plans are being drafted? I'm just curious as to your position, from the WWF, in terms of what we might be doing or considering interim as this process unfolds.

Mr. Monte Hummel: Yes, I do think you should. I think it should be clear that that's permitted. Certainly, the advisory council recommended that that be permitted. I think the issue is what the terms and conditions are under which interim development would take place, but I think First Nations feel extremely hemmed in right now. There are water-power projects, road proposals, things that conceivably could grind to a halt which are going to be consistent with their community land use plans, so I think a reasonable accommodation—speaking for WWF now. Nobody speaks for the council anymore because it's been disbanded, but there is a section of the council report that refers to this as well. I think that would be a reasonable accommodation, and I know it's a concern for NAN.

Mr. Bill Mauro: So a lot of the economic development work that would be necessary for some industrial development to occur is still allowed currently through this legislation; for example, feasibility studies, wind testing for any green energy project that might occur. That kind of work is still allowed. It's important to note that most of the industrial development that could potentially occur in the far north is going to require some transmission capability which does not currently exist. It would be difficult for anything to really happen tomorrow, so I think there's some context there that we all need to keep in mind when we're considering what can happen in the interim, in the very short term, quite frankly that being probably very little. There's still an allowance for that currently.

1030

Anyway, I just wanted to thank you. I appreciate your comments, and we appreciate your work on the far north advisory council as well.

The Chair (Mr. David Oraziotti): Thank you, Mr. Mauro. Thank you; that's time for your presentation.

Mr. Monte Hummel: Thank you very much.

BEDFORD MINING ALERT

The Chair (Mr. David Oraziotti): Our next presentation is Bedford Mining Alert. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. You can start by stating your name, then you can begin your presentation. Before you do that, I'm going to just mention again that for those interested, there is an additional room where you can watch the hearings today, out these doors and down the hall to the end on the right, committee room 1. That has been set up if anybody needs a little extra room. Go ahead, you're welcome to start.

Ms. Marilyn Crawford: Marilyn Crawford.

Mr. Alexander Cameron: Alexander Cameron, the chair of Bedford Mining Alert.

Ms. Marilyn Crawford: Good morning, Mr. Chairman and members of the committee. Bedford Mining Alert is pleased to have this opportunity to comment on Bill 173, the Mining Amendment Act.

Bedford Mining Alert is a group of concerned citizens in Bedford district of South Frontenac township who have been working for 10 years to bring about constructive changes to the Ontario Mining Act. Many of our members are surface-rights-only landowners. However, our reach goes far beyond our individual membership and Bedford district and includes South Frontenac township, local lake and river associations, Land O' Lakes Tourist Association and Rideau Valley Conservation Authority. They have confirmed their support for our goals and objectives in reforming the Mining Act.

We are supportive of Bill 173 as an important first step in modernizing the act. I will describe recommendations that, in our view, should be included in Bill 173, the associated regulations and related legislation.

BMA believes that mining is not necessarily the best use of land and the purpose of the act should reflect this belief. An express statement in the purpose of the act should ensure that prospecting, staking and exploration for the development of mineral resources are undertaken in adherence to three fundamental principles: first, in a manner that is sustainable socially, environmentally and economically; second, only where mining is determined to be consistent with and complements economic development plans of a community; and third, in a manner that is consistent with the legal obligation of the crown to aboriginal peoples.

We agree with the withdrawal of mining rights from prospecting, staking, sale and lease in southern Ontario where there is a surface rights owner and where the mining rights are held by the crown. There needs to be certainty within the act that this withdrawal order will not be revoked. The essential next step, in our view, must be to pass legislation rejoining mining and surface rights that are privately owned.

We also submit that Bill 173 should be amended to withdraw any lands, mining rights or surface rights that are the property of the crown from prospecting, sale or lease, unless they are identified as having provincially significant mineral potential.

Bill 173 should also be amended to withdraw lands where site alteration is not permitted in an official municipal plan. These withdrawals will provide certainty for other economic activities such as recreation, eco-tourism and resort development that would otherwise be adversely affected. To protect local heritage, economies and sensitive lands in Ontario, we recommend withdrawing from prospecting, staking and exploration UNESCO heritage sites and biosphere reserves; for example, the world heritage site of the Rideau Canal, one of 20 sites in Ontario, and the Frontenac Arch Biosphere Reserve, one of 15 biosphere reserves in Canada; also, areas identified by official municipal plans as environmentally sensitive, significant and a natural heritage.

Where there are pre-existing rights and tenure in southern Ontario, the mining rights should be withdrawn from prospecting, staking, sale or lease when a claim, lease or licence of occupation reverts to the crown.

The act should be amended to define the terms of notification and/or consent for exploration plans, restoration plans, environmental impact studies and compensation to the landowner. It must be clear in the act that our recommendations addressing proposal to explore, exploration plans and permits should apply to pre-existing rights and tenure, as outlined later in this presentation.

Legislation should limit the duration that existing claims can be held to five years in southern Ontario. Landowners should be advised of the status of the claim by the claim holder, and be given one year to dispute the existing claim. A claim holder should deliver a notice of transfer to the surface-rights-only landowner within 30 days of a claim being transferred.

Bill 173 proposes that a surface-rights-only landowner may apply to have the mining rights for the lands reopened for prospecting, sale or lease. In the event of an application, the minister should have prescribed conditions to make a decision. These include consideration for the mineral potential of the land, that the area of land is sufficient and complies with the current staking regulations, and any other criteria that may be prescribed, including criteria contained in municipal official plans.

Bill 173 proposes areas for restricted lands. The bill should be amended to increase size and distances that are not open on restricted lands without consent of the minister. Restrictions should apply to land used for agriculture and managed forests. The minister should not be able to give consent after staking has taken place on restricted lands.

Current legislation requiring a notice of intent to perform ground exploration work has been revoked. A proposal to explore should replace the notice of intent. The proposal-to-explore document should be delivered to the landowner's address not less than 90 days in advance of the plan's commencement of the proposed exploration work. People who have little knowledge of the act will require sufficient time to research the subject matter and obtain legal advice on any actions they might consider. Relevant information should be provided to the landowner.

Any "arrangement," as mentioned in Bill 173, should include a written agreement between the surface-rights-only landowner and the claim holder prior to entry and exploration. Standard terms and conditions should be required in an exploration plan or permit.

Whether the exploration is to take place on surface-rights-only land, private land or crown land, exploration plans should be broadened to include environmental impact studies and plans for restoration of exploration sites. The plan should be agreed to by the surface-rights-only landowner or, in the case of private or crown land, the local community authority. The Ministry of Northern Development, Mines and Forestry should inform the landowner and the local community of their rights and

responsibilities under the act. Plans should be reviewed by and meet the requirements of conservation authorities and municipalities, and be approved by the Ministry of the Environment. The final plan should be approved by MNDFM and certified as having satisfied the review and the approval process.

Before implementation of the plan, the exploration company should be required to provide MNDFM with a deposit sufficient to cover the full cost of restoration. MNDFM should be obligated to ensure the remediation and restoration work is done in a timely manner in accordance with the plan and applicable law.

1040

Any material changes to the plan during implementation must be approved by the landowner and MNDFM and be reviewed by the municipality and, if relating to matters of concern to them, the Ministry of the Environment and conservation authorities.

In addition to training, prospectors should be required to meet standards and maintain a minimum of \$2 million of public liability insurance and meet bonding requirements.

A dispute resolution process similar to the proposed process related to aboriginal consultation should be developed for surface-rights-only landowners. The dispute and appeals process should include an independent arbitrator and be an arm's-length process that does not involve MNDFM or MNR. Appeals should be heard by a neutral body. Any costs associated with the appeal should be borne by the licensee or claim holder, unless the appeal is determined to be frivolous and vexatious.

Bill 173 affords the minister, the director of exploration and provincial recorder a significant amount of discretion. Prescribed terms and conditions should apply to discretionary decisions such as issuing a permit or an order and in determining that it is not feasible to give notice of claim-staking. There needs to be a process to appeal the decision made by the director of exploration.

The amendments to the bill should develop regulatory options for placing more stringent conditions on how uranium exploration is conducted because uranium poses unique documented risks. We recommend that no person should prospect or explore for uranium in eastern Ontario.

Alternatively, to protect drinking water in a precautionary fashion, no person should prospect or explore for uranium in areas identified as a source of drinking water through the Clean Water Act or the source water protection act.

Alternatively, or until a process is established to assess the risk, no person shall prospect or explore for uranium until environmental assessment requirements are in place.

This concludes my presentation. Thank you for your interest and attention, and once again, thank you for giving Bedford Mining Alert this opportunity to address the committee.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation today.

Before we get into the questions, I'm going to make mention again of committee room 1, out the doors, down

the hall to the right. It's an overflow room where you can watch the proceedings as well if you're looking for a place to sit down.

We'll start with you, Mr. Bisson. Go ahead.

Mr. Gilles Bisson: Thank you for your presentation. I have a couple of questions. In the exploration business of finding a mine, as you well know, you've got to look at a lot of ground before you ever get to the point of actually bringing a mine into production. So the point that you make in regard to the process of notification to private property owners and, I would argue, First Nations: How do you maintain a system that allows a system of staking that doesn't put the exploration company or the prospector in a position of telling everybody out there what's available so that at the end of the day they're not the ones who are actually going to have the land to prospect? Do you have a suggestion of how that could be done?

Ms. Marilyn Crawford: I think what you're talking about is security of mineral tenure and that historically we have looked at the free entry system, where staking gives first priority to exploration. There could be possibilities for removing the free entry system of tenure with staking. That would look something like a permitting system, where there could be first priority for someone applying for a permit to explore. If such a process were in place, I think that would also assist the crown in their legal obligation to consult and accommodate. I think it would allow for the crown to step in and say, "We've got an application here. We need to go into a community and we need to consult and we need to ensure that this is acceptable to a community."

Mr. Gilles Bisson: So to put it shortly, it's sort of a two-step process: one that somehow maintains an open-staking system without disturbing the land and then the second step being what you're arguing, a requirement that then there be some permission obtained by the mining exploration company for exploration on that private land or First Nations territory.

Ms. Marilyn Crawford: I would see that the process would not involve the staking; it would involve permitting. A proponent would have a notice proposing to explore, and the Ministry of Northern Development, Mines and Forestry would receive that proposal. Then the permitting system would—I won't spend a lot of time on what the different aspects and criteria.

Mr. Gilles Bisson: I just wanted to make sure that we're separating the two.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. That's time. Mr. Brown, go ahead.

Mr. Michael A. Brown: Welcome to the committee, Ms. Crawford and Mr. Cameron. I first want to commend you on the good work that I know your organization has done for many years in bringing these issues to the fore.

Earlier this morning—I don't know if you had the opportunity to be here, but the Ontario Real Estate Association was here.

Ms. Marilyn Crawford: Yes, I was here.

Mr. Michael A. Brown: When asked whether the province should withdraw staking rights from southern

Ontario, they said yes. That's what they thought should happen rather than what your position seems to be, which is that we unite mineral rights and surface rights into one. Their concern was that if we did, as a government, unite the mineral rights and the surface rights together, that it would be possible for a landowner then to sell the mineral rights to the property after the fact. Could you share with me your views on their submission?

Ms. Marilyn Crawford: Certainly. I think that aside from property rights—and I understand that one of their main guiding principles is protecting property rights—a vision where there is an assumption that mining is not necessarily the best use of land has to take into account local communities and municipalities and environmental protection. There has to be all three of those. If lands were reunited, it would treat a percentage of landowners in Ontario the same as someone else. I feel that the important step, though, is that there has to be acceptance from communities and municipalities before exploration comes into place. That's one of the reasons why we have said that surface-rights-only landowners should not be able to apply to have the withdrawal order revoked on their property, that that should be a decision that their municipality should make rather than an individual landowner, because it's important that the municipalities and communities affected have the right to consider whether or not they want mining to take place on their land, whether they want exploration to take place and if it is compatible with what existing development is occurring and economic drivers.

The Chair (Mr. David Oraziotti): Thank you. That's time for questions. Mr. Hillier.

Mr. Randy Hillier: Thank you very much, Marilyn and Sandy, for making your way down here today.

Listen, I'm getting a little bit confused about some of the responses. Just for clarification, I know that Bedford Mining has been active for many years. I think it's appropriate where you mentioned in your brief that some first steps have been taken with regard to mineral and surface rights unification. Under this proposal, we are not unifying surface and mineral rights in southern Ontario. The act allows for the minister to withdraw and deem those mineral rights to be withdrawn from staking. What is the position of the Bedford Mining Alert as far as having the minister deem that to be withdrawn? Are you concerned that at some point down the road, those staking claims may be again reinstituted or re-allowed? Or are you looking more for the surface and mineral rights to be unified?

I'll just add one other point. At the present time, anybody who has ownership of private land can sell or lease the mineral rights out of that land. That's always been the way, so—

1050

Mr. Alexander Cameron: And we support the withdrawal, the lands. We believe that there is the potential to have that revoked, and the lands that were withdrawn would not be withdrawn anymore, and therefore we do

propose or believe that the surface rights and the mining rights should be reunited.

Mr. Randy Hillier: So you're supporting the withdrawal, but as a—

Mr. Alexander Cameron: It's a first step.

Mr. Randy Hillier: —as a first step. I'll leave it at that. Thank you.

Ms. Marilyn Crawford: And I think also that in our submission and in our presentation, we made it clear that we need a certainty that this order cannot be revoked at any time. From what I understand right now, there had been an order signed on April 30. It's a ministerial order. But the way I read it in Bill 173, this is a little different than a ministerial withdrawal order—this can be revoked any time. It's embedded in the Mining Act so it has more strength to it, but what we have asked for is that there needs to be clarity and certainty that it can't be revoked without an awful lot of red tape to go through.

The Chair (Mr. David Oraziotti): Thank you very much for being here today. That concludes your presentation.

NISHNAWBE ASKI NATION

The Chair (Mr. David Oraziotti): The next presentation, Nishnawbe Aski Nation. Good morning and welcome to the Standing Committee on General Government. Go ahead and have a seat. You have 15 minutes for your presentation and five minutes for questions among committee members. If you would like to state your name for the purposes of the recording Hansard, you can begin your presentation when you like.

Grand Chief Stan Beardy: I can start now?

The Chair (Mr. David Oraziotti): Yes.

Grand Chief Stan Beardy: Okay.

Remarks in Oji-Cree.

My name is Stan Beardy, Grand Chief of Nishnawbe Aski Nation. I have here with me two elders, Elder Gregory Koostachin from Attawapiskat, Elder Louis Waswa from Port Hope, and I have a group of young people here as well, and they will be making a brief presentation after my opening comments.

Greetings, Mr. Chairman and members of the standing committee. Nishnawbe Aski chiefs-in-assembly have condemned Bill 191 and instructed me and my staff to take all steps necessary to stop the bill from becoming law. Nishnawbe Aski chiefs demand a fresh, meaningful government-to-government dialogue based on our treaty-making relationship. Bill 191 tries to govern land use planning in what you call the far north. Virtually every single community there is a Nishnawbe Aski First Nation.

Nishnawbe Aski First Nations hold inherent First Nations aboriginal and treaty rights. Our First Nations are truly democratic in that authority rests directly at the First Nations level. Our people have the autonomy to decide on their course of action, and their members are the rights holders.

It is not an exaggeration to say we are the north. The pathways of that place are filled with our stories and our history and are governed by our laws and customs. To this day, only First Nations people live there.

With the greatest respect to the honourable members, you don't live in this land you are trying to govern. Neither do the civil servants of the Ontario government. Yet for some reason, they feel compelled to govern us from afar. We cannot accept that. The north is our homeland and we govern and protect it through our inherent right, given to us by the Creator. Since time immemorial, our people have exercised our inherent right and protected the lands. That is why they are still in pristine condition. And we will continue to protect our lands for future generations.

We did not surrender our land by treaty or any other way. We will exercise our aboriginal and treaty rights throughout our homelands. But we are willing to have shared arrangements with the government of Ontario. We want a meaningful partnership which is based on our treaties. Bill 191 isn't a partnership. It is an entrenchment of the powers of MNR, and it is a violation of our treaty understanding that we would coexist and share as equal partners.

I well know from your questions just how much you understand about a treaty. Bill 173 isn't a partnership either. NAN First Nations have great concerns because it does not go far enough to seek proper prior informed consent. It too is a violation of our treaty relationship based on peaceful co-operative partnership agreed to more than 100 years ago. That is why we object to them, and that is the message I'm delivering to you today.

A few words about consultation: I hear a lot about consultation these days, and about Ontario's legal duties to consult. I want to be clear about this: Just because I have appeared here today does not mean you have consulted with the First Nations in Nishnawbe Aski Nation. NAN, the organization I represent, a political organization, does not have any aboriginal and treaty rights. This hearing is not consultation.

I mean no disrespect to the individual members present. However, the chiefs of Nishnawbe Aski do not view this committee process as legitimate, as they are not talking to the rights holders. As I have said to the Premier, this process has been rushed, insensitive to the First Nations, and a violation of your legal duties to consult with First Nations. I cannot see any other way the Ontario government can rightfully move forward with both bills without first meeting this duty. This means that each First Nations should be consulted without artificial timelines, as I stated already. First Nations and their members hold aboriginal and treaty rights. They must be consulted directly.

The bills should be considered separately, not bundled together.

The committee hearings should be in the geographic space you claim to govern. They should be in our communities, in what you call the far north, but instead, for your convenience, they are taking place in your towns

and cities, far from our homelands, yet First Nations are expected to come to you. Travel is expensive where we are from, even by your standards, and by the standards of our communities—communities that face poverty on a daily basis—the travel cost is prohibitive.

The hearing day you have set in Chapleau, during our summer caucus, is on the very day that Nishnawbe Aski Nation will elect a new Grand Chief and his Deputy Grand Chiefs. I do not think the honourable members here intend to insult us, but you knew our elections were that day and still you have scheduled the hearing around this week. Imagine if a crucial hearing for Ontario were scheduled on the day of Ontario's provincial election. You would be furious, and justifiably so. It is a profoundly shocking and insensitive move and a poor reflection on your government.

1100

Over the last years we have made our views on both pieces of legislation known to the government of Ontario in great detail, and they have not listened. I will not legitimize this committee process any further by going over the ground already provided here again today; however, I want to point out that First Nations were engaged in honest, community-driven land use planning discussions with your government for at least one year prior to the Premier's announcement of the protected lands act. The whole idea of why we were engaged in land use planning at the time was to ensure economic opportunities were there for our people to address the living conditions of our people. As you know, they are poor.

The government of Ontario knows our stance on these bills. We have been clear on them from day one. So I'll be leaving these doors today to share this message with the people of Ontario. I and many supporters of NAN will be outside today, as you sit in the committee, in a rally in support of Dunakiiwin, which in quick translation means "homelands." Our supporters come from all walks of life, including from the environmental movement, from industry and from the churches. We'll be sending out our prayers for you as a committee today in hopes that you will listen to my comments with an open heart.

Also, I am joined here by the next generation of First Nations leaders, who have travelled over 23 hours by train from the north to be here today. They are here because they too are concerned about their land and how they will be able to benefit by it as well as take care of it for future generations. They have a statement that they would like to make and something they would like to present, so I will turn it over to them. They have petitions they have collected, so would they present them to the Chair?

The Chair (Mr. David Oraziatti): I'll ask the clerk to pick them up, and we can table them. Thank you very much for those.

I'll just ask whoever is speaking to state their name before they go ahead. You can start when you'd like.

Grand Chief Stan Beardy: Sorry?

The Chair (Mr. David Oraziatti): They just have to state their name and then they can go ahead and make the presentation.

Mr. Stephen Kudaka: My name is Stephen Kudaka. My band is Bearskin Lake First Nation.

The Chair (Mr. David Oraziatti): Welcome, Stephen.

Mr. Stephen Kudaka: Thank you. I'm one of the youth who travelled on the train. The other ones are behind me there. Our trip was actually a rather symbolic journey: I understand the treaties were signed because the government was interested in westward expansion and the railway was important for that, so that's why we took the train.

We're here because we are concerned about our future. This bill, the way it's laid out, is not conducive to having a good future for this and future generations, and as a youth member of Nishnawbe Aski Nation I'm here to oppose it and ask that it be withdrawn.

Thank you.

Grand Chief Stan Beardy: In closing, I thank you for your attention. My comments today have been offered in a spirit of respect and a real desire to speak from my heart as I deliver the message of my people. It is their hope that you, the honourable members of this committee, will hear out and respond to their message. We remain hopeful and we are asking the Premier and his cabinet to work with our First Nations on common objectives. These include conserving our lands while stimulating the economy and improving the living conditions of all of our peoples.

The expectation of Nishnawbe Aski Nation, as per our treaty-making, is that you, our treaty partner, respect the spirit and intent that our people agreed to 100 years ago when that document was signed. We reiterate that you withdraw this legislation and begin a respectful dialogue with our First Nations, without artificial timelines, on a process that is agreeable to both groups. That is the message I was sent to deliver today. Thank you very much.

The Chair (Mr. David Oraziatti): Thank you very much for being here today and for your presentation.

We're in rotation of questions. Mr. Mauro—the government—go ahead.

Mr. Bill Mauro: Thank you, Mr. Chairman. How much time do I have?

The Chair (Mr. David Oraziatti): You have about three minutes or so.

Mr. Bill Mauro: Thank you very much.

Grand Chief Beardy, thank you very much for being here today, and especially for taking the time to travel from Thunder Bay. It's always nice to see a familiar face. Welcome to the elders and to the youth who have taken the time to travel here as well today.

We have received a number of deputations this morning, and I would suggest that there are probably three themes that are starting to evolve through the deputations that we've heard today. I'm going to comment on those briefly before I have a question or two for you, time permitting.

Certainly one of the themes has been consultation. I think it's important for us to get on the record as often as

possible and it's important for everyone to know and remember that this is first reading only. I know that my friend Mr. Bisson has been around this place for a long time and had the opportunity to serve in government. I don't know how frequently bills have travelled previously after first reading. Understand that this is not the only consultation that is being undertaken, but certainly the committee process is part of that. Given that we're doing it after first reading, I think it's important to remind people that you can view it almost as a pre-consultation. It's the beginning of a long process. I also believe that you are in receipt of a letter from the minister advising that we will be asking our House leader for the bill to be referred to committee for an additional round of committee hearings in northern Ontario after second reading debate. This is the first step in a process. It's not the norm, and we will be asking our House leader to try to get an agreement to do this after second reading again.

You referenced the date that has been set aside for Chapleau. It's important for us to remind people that the decision on which communities the committee visits is not the decision of the government, but is in fact a decision made by the subcommittee of this committee that has representation of all three political parties on it.

I would like to address the funding issue as well. That's coming out as a common theme. In our budget in 2008, we committed \$30 million to build capacity on the land use planning piece. I think there was a further announcement out of the \$25-million relationship fund, and I think \$9.5 million of that has flowed to allow for capacity building in First Nations communities as well. I think the bill also references our willingness to move forward and to try to enhance further capacity for more consultation on a go-forward basis. But it's not unusual at all—in fact, it's the norm—for the legislation not to specifically identify a dollar amount for something like that. So I thought it important that I get that out there.

Grand Chief, I would be interested, however, in your thoughts. One of the concerns I think that most people have, and I think fairly so, and I'm sure that others—when we get to second reading discussion in the Legislature, this is likely to receive a fair bit of time: What's going to occur now, as we go through this process, in terms of interim development, while the bill is before us? I'm interested in your concerns in terms of what may or may not be occurring while we're in the process that we find ourselves in now.

Grand Chief Stan Beardy: Thank you for your question.

First of all, the Nishnawbe Aski chiefs will be meeting next week. All the 49 First Nations will assemble in Chapleau Cree. We will give them an update from today's event, and also your question will be presented to them: What is it that needs to happen during the hearings?

Definitely, from the outset, we have raised our issues that in terms of protected areas, we want that to be defined in partnership with Ontario—what that means in terms of protected areas, in terms of areas for potential

development. We want to make sure, if the protected area act comes into play, that it does not shut down our economic opportunities for future generations. We want to be in a position to stimulate and create real wealth in our territory.

As I mentioned in my presentation, we are the poorest of the poor in Ontario, yet everybody else has been getting rich from our natural resources for the last 100 years. We want the opportunity to address it.

1110

As I mentioned, we are for land use planning. We are in the process already, at a bilateral level in Ontario, talking about the need to have community-driven land use plans in place, in partnership with Ontario, to make sure that land uses are adequate and they're appropriate in terms of what areas need to be protected and what areas can be identified for potential future development. I think that's the wish of my people: to be in a position to make sure that we can develop natural resources when and if appropriate.

The Chair (Mr. David Oraziotti): Okay, thank you. That's the time, Mr. Mauro. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much for being here today. It's absolutely appreciated that you've made the journey down here and shared your comments and your thoughts.

There are a couple of things I'd like to mention and also get your response back on. The first is, there has been that theme of no consultation or poor consultation, poor communication. You're certainly not the first person to mention it today—and from what we understand, we'll be hearing that from quite a few others—and that is inconsistent with respect, it's inconsistent with democracy, it's inconsistent with our thoughts, ideas and views.

You've mentioned protected areas—and I really trust that this communication will be improved upon. This is the first I've heard about another round of travel for this committee. I think it's also important, which you made mention of, that we must separate these two pieces of legislation so that we have a clear understanding during these committees of just what it is and who it is that we're dealing with. Clearly Bill 191 and Bill 173 appeal and have different interests across the province.

Your idea about protected areas—and you've mentioned that you want that defined. I think that's very important because everybody here and everybody in this audience, I'm sure, has a different view of just what is protection of an area. I share your concerns as well that it appears that this "protected area" could provide more economic harm to the people of the north and be a de-economic plan for the north more than an economic development plan. Your ideas on protection: You may want to expand on that a little bit. And your views, your consultations with others: What are their views of protection? Are they in harmony with your view?

Grand Chief Stan Beardy: Thank you very much for your question. In terms of consultation, in my opening comments I made it clear that Nishnawbe Aski does not

have any rights. The organization I work with does not have any aboriginal and treaty rights. So by virtue of my talking to you, that does not construe it as being consulted. It's the rights-holders, the people on the land, the First Nations level, the leadership at the community level who hold those aboriginal and treaty rights, and they are the ones who need to be consulted. NAN's role, basically, is to facilitate that process to ensure that they are being heard, that the people who need to talk to them do consult with them.

I think it's really important, when we talk about consultation, to understand that when we talk about NAN territory, we're talking about 55 million hectares, 210,000 square miles, for the First Nations, and there are three distinct groups within that territory. In the far north, we have the Crees; in the middle, we have Oji-Crees; down south, around the 50th parallel, we have Ojibwas. If there's a legal requirement of the crown's responsibility to consult with them, we would expect that an attempt be made to talk to those people in their own language so that they understand what is being proposed to them.

In my presentation, I mentioned that when we talk about the far north, it's only First Nations people who live there. We have lived there for close to 10,000 years and we have preserved the natural environment up until now. We will continue to protect the natural environment, but at the same time, we haven't been in a position to create an economic base for ourselves so that we're in a position to begin to address the living conditions of our people.

When we look at the economy today, the collapse of the global economy, the stock market, gold has retained its price, \$1,000 an ounce, while everything is falling. The same thing with platinum at \$2,000 an ounce, and the diamonds, and that's what we're interested in, to work in partnership with Ontario and the industry and the private sector to create a viable economic base for our people, for our future generations.

When we talk about protected areas, there are two perceptions to that. Our definition of protected areas means saving something for future uses. Under the provincial legislation, when we talk about protection, we're talking about preventing any activity from that protected area forever and ever and ever. For us—

The Chair (Mr. David Oraziatti): Mr. Beardy, Chief, I'm going to have to stop you there.

Grand Chief Stan Beardy: —that distinction has to be made, that when we talk about protected areas, it has to be that we're in a position when the time comes to develop those opportunities. We should be able to do so, because we're talking about for all Ontarians.

The Chair (Mr. David Oraziatti): Chief, I'm going to have to stop you there for a moment. We have to move to Mr. Bisson, as time is pressing here. I'm sorry, Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I would enjoy chatting and discussing that more.

The Chair (Mr. David Oraziatti): Thank you, Mr. Hillier. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I would say to Mr. Hillier that if he had allowed this committee to go to the far north, as I suggested, he could have had lots of chats with lots of people. So that's a little bit thin on my nerves here.

The Chair (Mr. David Oraziatti): Okay, we're not going to get into this.

Mr. Gilles Bisson: Just for the record, before I ask you a question, let's be clear there are two bills here. There's Bill 191 and Bill 173. It's always been understood that the far north planning act was at first reading, and after second reading it is the tradition in this Legislature that they go out to committee. So that's nothing new, that's nothing exciting; that's something we already knew.

For those who are interested, the other part of the act, which is the Mining Act, is at second reading and this is your only kick at the can as First Nations, or anybody else who's interested, to be able to have an effect on what this final bill will look like. They will not have an opportunity to send this back to committee again. So therefore I believe the Mining Act is just as important to the far north as the far north planning act is to your people and we should have been travelling that bill to your communities as well.

Your point was well made—I was going to ask you the question but I appreciate you've already said it—and that is, your people have been stewards of the land for 10,000 years. Is it fairly well protected, Chief?

Grand Chief Stan Beardy: Yes.

Mr. Gilles Bisson: And so therefore, shouldn't you be in the driver's seat when it comes to continuation of the protection and the planning of your land?

Grand Chief Stan Beardy: Yes. All we're saying is that in terms of land use planning, we want the process to be community-driven at the district level and the regional level. We ought to make sure that we utilize the traditional knowledge of our elders to make sure that we are protecting something for future generations and at the same time entertain sustainable development.

Mr. Gilles Bisson: Thank you very much. If you have any last comment on my time, use my time, if you have a closing comment.

The Chair (Mr. David Oraziatti): Thank you very much. That concludes the time for the presentations. I appreciate you coming in today. Thank you all for being here. We know you've travelled a long way.

ONTARIO BAR ASSOCIATION

The Chair (Mr. David Oraziatti): Our next presentation is the Ontario Bar Association. Good morning. Welcome to the Standing Committee on General Government.

Mr. Mike Colle: There's no quorum. They've all walked out.

The Chair (Mr. David Oraziatti): We have the majority of committee members; we're fine.

You have 15 minutes for your presentation, five for questions from committee members. Just state your name

for the purposes of our recording Hansard and you can begin when you're ready.

Mr. Jim Blake: Are we ready?

The Chair (Mr. David Oraziotti): Go ahead.

1120

Mr. Jim Blake: Okay. My name is Jim Blake. I'm chair of the working committee that the Ontario Bar Association has put together to address issues, as they see it, relating to Bill 173. You'll note that our submission deals strictly with Bill 173, although there are connectors, of course, to the far north legislation.

I thought I'd emphasize at the beginning that this submission reflects the experience of lawyers practising in diverse areas, such as natural resources, aboriginal law, environmental law, and alternative dispute resolution. A particular effort was made, in putting this submission together, to ensure that a balanced, harmonized submission was presented to you that is supported by all of the practice sections of the Ontario Bar Association. As you can imagine from the diverse areas I mentioned, that did involve a fair amount of discussion and preparation work.

The submission, you'll notice, is divided into nine topics. My colleague Kenning Marchant, who is an executive member of the aboriginal law section of the Ontario Bar Association, will lead off this presentation, and I will then deal with the remaining topics.

Kenning?

Mr. Kenning Marchant: Thank you, Jim. Mr. Chair and members of the committee, I'm Kenning Marchant.

The courts have said that the crown has a duty to consult and, where appropriate, accommodate aboriginal and treaty rights. The courts have also said that aboriginal representatives have a duty to respond in good faith. And the courts have said that only procedural aspects of consultation can be delegated to project proponents.

The Ontario Bar Association recommends first that section 2 of the bill be amended to clearly state "...the duty to consult and, where appropriate, accommodate, consistent with the honour of the crown." The act should say, as the Supreme Court of Canada has, that consultation is a substantive obligation of the crown that cannot be delegated to project proponents except as to defined procedural aspects.

"Consultation" can be a vague term. Aboriginal communities and industry both need predictability. The Ontario Bar Association recommends that consultation standards should be attached as a schedule to the new Mining Act.

Aboriginal and treaty rights are not uniform across the province. Impacts on aboriginal and treaty rights are not uniform across all projects. Consultation is the means to identify rights and impacts and to chart the ways to address them.

Consultation requires, first, identifying aboriginal stakeholders. Government databases and aboriginal organizations can be rich sources of such information.

Standards are required on timing, on information exchange, on the rights recognition process and on impacts

analysis. Guidelines are needed on what aspects can be procedurally delegated to project proponents. The Ministry of Aboriginal Affairs already has published guidelines. These could be revised in light of similar standards from federal, aboriginal and industry sources. Setting out standards in the bill may take additional time. However, that will help develop a more stable and productive consultation environment.

The OBA is also concerned that the dispute resolution arrangements with respect to aboriginal consultation in the bill are vague and potentially controversial. Section 170.1 and related provisions would allow the minister to decide the who, what and why of dispute resolution. Now, the government is always a party to a constitutional issue. Alternative dispute resolution norms require some form of consent of all parties. The OBA recommends that section 170.1 provide a two-stage process: first of all, conventional mediation; then, if required, adjudication by an independent tribunal. That could be the courts, or the Legislature could authorize a special-purpose body.

These points are all described in more detail in the written brief you have before you.

In conclusion on my part, the new Mining Act is an opportunity to advance Ontario as a leading mining jurisdiction. It's important, we suggest, that it also be a leader in the important dimension of aboriginal consultation and accommodation. That can be best accomplished by setting out clear standards in the primary legislation, Ontario's new Mining Act.

Jim.

Mr. Jim Blake: Thank you, Kenning. I'm going to turn us now to topic two in our submission, which is the licensing of prospectors. Our comment 2.1 is a relatively minor thing but it was suggested and is suggested as a matter of clarity for measuring purposes. I think it's truly non-controversial, but we recommended adding the words which are underlined in the submission, "for the prospector's licence." It just helps identify when the 60 days start running. So that's a drafting bit of clarity, but it truly did come up and was raised by a few folks.

In section 2.2 of our submission, we recommend—and you'll hear me use the term "primary legislation" a few times. Primary legislation means the act or the bill, and secondary legislation is the regs. You've heard Kenning mention the suggestion of using a system such as appending a schedule of procedures, which has been used in other important legislation like the federal protection of information legislation. Similarly, we would recommend that for the awareness program, consideration be given to some of the best practices codes that are out there, and there are ones. There's a current one; PDAC's e3 Plus framework for responsible exploration could be considered, and that's just a sample. There are various codes that are out there that can be adopted and used for the awareness program for the training of prospectors.

Our third topic was the notice of staking. There's a new requirement that notice be given in the prescribed manner, and it's notice to surface rights owners. Our recommendation is to state clearly in the primary legis-

lation that it's notice to the surface rights owners as recorded in the land registration system, because there has to be some way of finding out who these folks are that you're notifying. Also, for search purposes, as you often do when licences are dealt with, you should be able to search the public office and the claims abstract to see if proof of the proper notice of staking has been done. It should be a simple piece of paper that could be registered once the registrar's happy with it. So this puts the work, if you will, back on the field and on the protagonists who are interested in this. They can do their own searches, do their own notices and make sure that they're on and get their proof registered in time. These are mechanical, but I think they are helpful; I hope they're helpful suggestions.

Then topics four and five deal with southern Ontario, northern Ontario and the far north. Where lands are withdrawn from staking—I'll just use staking; they're withdrawn from prospecting staking and so on—only surface rights owners have been provided with a mechanism to apply to the minister for reopening the mining rights of the lands or any part of them. There's no provision similar to section 35 that would allow the minister to reopen lands on the application of either a prospective holder of mineral rights or, indeed, a former holder of mineral rights who may have stubbed his toe and missed a time period and would like to revive them. It's called relief from forfeiture. But there's no mechanism to provide anyone other than the surface rights owner to make this sort of application, and we're just noting that it should also be available to either prospective or former holders of mineral rights.

In the far north, as we know, subsection 204(2) of this bill, the Mining Act, prohibits new mine openings if a community-based land use plan has been designated for a use that's inconsistent with the opening of a new mine. We recommend that where advanced exploration has already occurred, before this legislation comes into force, those projects should be grandfathered to allow a new mine opening rather than have to go through the very subjective discretion of the Lieutenant Governor in Council, the way it's currently anticipated.

1130

Topic 5.2: If no community land use plan is presently in place, the opening of a new mine is prohibited. However, staking, early exploration and advanced exploration are permitted. Our concern, which sounds exactly similar to Grand Chief Beaudy's concern, is that because of the uncertainties of whether you could ever bring a discovery—why would you keep on doing those activities if you've got no assurance of being able to bring a discovery of a good property to production? This could result in what the Grand Chief had mentioned as a type of freeze or economic downturn for their area. Similarly, the industry is concerned that monies would simply go to a jurisdiction where there's greater surety of how things work, where the rules are clear.

In 5.3, we clearly recommend that the costs of aboriginal consultation be expressly recognized as qualifying for assessment work. A stakeholder has to do

assessment work, and the cost of the consultation process should count towards that credit. In our paper that we recommended on October 23, before the legislation was drafted—we were one of a number of voices that recommended that there be funding to aboriginal communities and organizations to ensure that they were in a position to consult in a meaningful way. This is a sort of corollary. The cost of the consultation should count as a cost for assessment work.

The proposed legislation does not address whether holders of mineral claims, leases or licences of occupation will have any status whatsoever to participate in the community-based land use plan process. In other words, you can't tell who has status to—the plans will take a lot of time to put together, but it's not clear who would be entitled to participate, and I think that should be focused on or addressed in the legislation.

The sixth topic was exploration plans and permits. There have been suggestions that the prescribed activities requiring permitting might cover pre-staking exploration activities. We recommend that the primary legislation clarify that it does not apply to pre-staking activities, which, by their nature, must be kept confidential. In fact, many aspects of the new legislation make it clear that once you've staked, the confidentiality period is now over, but you then have to notify and go forward through the exploration permit process, which—two submissions ago, you heard people, in fact, making recommendations about exploration needing to file plans. That's indeed reflected in here. There was just a concern that amongst some of the administrators of the legislation, the definition of "prescribed activities" in section 78.1 might just creep out and cover pre-staking exploration work. That would totally be in conflict with the way staking is done.

The Chair (Mr. David Oraziotti): Just so you're aware, you have a little less than a minute to wrap up.

Mr. Jim Blake: Okay. I will go forward to the restricted lands. There's a listing of restricted lands. If I can direct you to 7.2, we've highlighted certain words with underlining. Where there's an existing list that says, "within 45 metres of a church, cemetery or burial ground," we propose that that list be expanded to cover "or site of spiritual, historical or ceremonial significance for aboriginal communities." Those are items that should be identified. One of our questions is, how will a prospector know where these lands are unless there's a database or some way of—you can find out after the fact, but to the extent databases can be developed, they should be, and that's a strong recommendation.

Kenning has mentioned the dispute resolution claims involving aboriginal interests. Section 8 also talks about the dispute resolution aspects of this legislation for matters other than consultation. The registrar has had a very successful informal mediation service that has been available. The commissioner's report of 2008 indicated there was an 85% success rate. I think you heard Kenning mention a two-step process of using the informal mediation and then going to the more formal process if it can't be resolved. But the ministry does have an 85% success rate—

The Chair (Mr. David Orazietti): I'm going to have to stop you there.

We'll move to the Conservative caucus. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much for being here—a lot of good, sensible, practical housekeeping and other issues that you've raised.

Mr. Jim Blake: We're trying to be supportive of getting this legislation—

Mr. Randy Hillier: Well, there are some areas that may merit support, for sure.

I'll take you back to two things that you mentioned. One is who to consult—big gap. We will be in a system of perpetual idleness if we don't know who to consult and if others don't know—

Mr. Jim Blake: On that point, you heard Grand Chief Beardy mention it's not NAN; it's the various underlying communities and who in the underlying communities.

Mr. Randy Hillier: Absolutely. Anyway, a point well made.

One thing I will draw your attention back to is item 4.1, where the government has moved to remedy, to some degree, the conflicting interests of mineral and surface rights when they're held by different people. Your observation and your suggestion would of course remove that remedy, even though it's a half remedy.

Mr. Jim Blake: Yes, and I realize that.

Mr. Randy Hillier: So the idea of the legislation is to reduce conflicts, not to expand upon them.

Mr. Jim Blake: I made the one point that there's a grandfathering for existing historical mineral claims and there's assessment work that has to be done. Right now, there's a freeze. On April 29 or 30 of this year, the freeze went in for southern Ontario. What if somebody blows it, makes a mistake, misses their dates? Under the regular provisions there's relief from forfeiture, but there's no mechanism here for relief from forfeiture, and if you blow it by a day, you're gone.

Mr. Randy Hillier: I have one more quick question. Sometimes you miss the sale at Tim Hortons on the roll-up-to-win as well—it ends. However—

The Chair (Mr. David Orazietti): Mr. Hillier, we've got to move on. Thank you very much for your co-operation. Mr. Bisson.

Mr. Gilles Bisson: I will just say that there's a lot of interesting stuff in here. I've got your names and numbers; I'll be calling you back because there's far too much to cover in three minutes. Thank you.

The Chair (Mr. David Orazietti): Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. There is a lot of stuff here. I appreciate your coming because the points you make will be valuable to us as we go through the clause-by-clause on this bill and try to identify potential pitfalls, at least in the drafting, as we go forward. That's why this kind of a presentation is very helpful to the committee.

I am interested, as you are, in the dispute resolution parts of the bill, recognizing that this is clearly a work in progress, as governments all over the world and par-

ticularly in Canada are trying to understand what First Nations' rights are here and what the crown's rights are here etc. Coming up with a dispute resolution system is, I think, one of the keys to doing this right, so we would appreciate even more advice on that particular issue. You don't have to do it right now—

Mr. Jim Blake: No, no, I was just thinking there is also an underlying concern that may or may not come through here about the importance of—there's a concern that industry doesn't want to have all of the consultation requirements delegated down to it, because first of all the courts have said only procedural matters can be, but it looks like there's a thrust in here to delegate as much as possible to the proponents. Proponents have had a good batting record, in some jurisdictions in particular, of hammering out private deals that everybody is happy with. So it can happen.

1140

Mr. Michael A. Brown: We recognize that, yes.

The Chair (Mr. David Orazietti): Okay. Thank you very much. That's the time for your presentation. We appreciate you coming in today.

Mr. Jim Blake: And thank you.

ONTARIO WATERPOWER ASSOCIATION

The Chair (Mr. David Orazietti): The next presentation is the Ontario Waterpower Association. Good morning, Mr. Norris, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. I'm just going to remind members of the committee that we're a bit pressed for time to keep to the agenda, so we'll try to keep the question period collectively to five minutes as best we can.

Go ahead, Mr. Norris, when you're ready.

Mr. Paul Norris: I'll do my level best to contribute to that objective.

The Chair (Mr. David Orazietti): Thanks.

Mr. Paul Norris: Good morning. Thank you, Mr. Chair and committee members. I trust by now you have our handout. My name is Paul Norris and I'm president of the Ontario Waterpower Association. I knew the maps would get somebody looking.

The OWA is a non-government organization representing the production and development of the province's primary source of renewable energy: water power. Today there are over 200 operating water power facilities in Ontario that collectively amount to over 8,000 megawatts of installed capacity, or about one quarter of the province's energy supply. Unfortunately, Ontario's complex and often conflicting regulatory and policy frameworks have significantly hindered the expansion of water power production, despite its acknowledged energy, environmental and economic advantages. Key amongst these frameworks is access, or lack thereof, to the resource through provincial crown land.

I'm pleased, therefore, to have the privilege today to provide input to your deliberations on Bill 191, the far

north planning act. Of specific relevance to this bill, the OWA has invested and continues to invest in engaging, enabling and empowering aboriginal communities interested in pursuing water power development opportunities. I will provide an overview of these efforts shortly.

I was also fortunate to serve on Minister Cansfield's far north advisory council and would like to acknowledge the contribution and commitment of my fellow council members and ministry staff in producing the March 2009 consensus report, the details of which I expect committee members have already reviewed and considered. I will be referring to specific elements of that report in this deposition.

Finally, and most importantly, I would like to acknowledge the leadership of the Nishnawbe Aski Nation and the aboriginal communities and peoples who call the far north home. Throughout the preparation of the advisory council's report, we had the opportunity to listen to and learn from a number of individuals whose lives will be directly affected by this legislation. I strongly encourage the committee to do the same.

Before addressing the details of the bill, I'd like to provide committee members with a sense of the challenges faced by our sector, particularly given that the primary legislative frameworks affecting water power fall within the purview of the Ministry of Natural Resources.

As you may be aware, to achieve the provincial objective of more than doubling electricity production from renewable energy sources, the Ontario Power Authority identified in excess of 5,000 megawatts of water power potential that was practical to develop, 3,000 of which was included in the first integrated power system plan. Despite this, results to date in bringing new water power online have been dismal. While applications for more than 100 projects have been filed since crown land was again made available in 2004, only three have been commissioned, for a total installed capacity of 60 megawatts. At the same time, more than 700 megawatts of wind has come online. Looking forward, the OPA identifies almost 900 megawatts of wind under development and only 80 megawatts of water. The key difference? Water power development takes place on crown land. I hope, then, that you will appreciate our concern with yet another piece of legislation that, in my view, does little to inspire investment in Ontario.

Turning to the matter at hand, over the last five years our association, in partnership with government and aboriginal interests, has made significant progress in enhancing the capacity of First Nations communities to participate in water power opportunities. Beginning in 2005, the OWA, through a collaborative and collective effort, designed, developed and delivered a series of Building Capacity Together workshops focused on introducing aboriginal communities to the business of water power. More than 70 community representatives have participated in these sessions to date, many of whom come from the far north.

To expand and continue the learning, the workshops were filmed and translated into Ojibwa and Oji-Cree, and

DVD copies of the workshops have been distributed to all aboriginal communities across Ontario. I've brought a copy of the DVD product for each party, should you be interested.

In addition, as you may be aware, the OWA led the development of a class environmental assessment for water power projects, recently approved by Minister Gerretsen. Unique to our sector, the class EA provides specific requirements for aboriginal engagement and the consideration of aboriginal traditional knowledge, developed with advice and insight provided by the Chiefs of Ontario.

Finally, we have just undertaken an initiative to assess the interest and capacity of communities with respect to water power development opportunities. The results of this analysis indicate that almost 90% of those communities surveyed have an interest in learning more about and pursuing partnerships in water power projects. In short, our industry is of the view that new renewable energy and aboriginal socio-economic prosperity are inherently interdependent. Moreover, I would suggest that this view is consistent with that articulated by the province in the Green Energy and Green Economy Act.

A key consideration with respect to the implications of the proposed legislation for the water power sector is the unique policy construct already in place in the far north. Two elements warrant specific consideration in this regard. First, unlike other crown land or resource-based economic opportunities in this geography, the core question of allocation has, for the most part, already been determined. Dating back to 1993 and confirmed by every successive provincial government, water power development in the far north is premised on the direct participation of and/or proponentcy by First Nations. In addition, the province's current electricity policy and related climate change objectives, as articulated in the filed integrated power system plan, identify approximately 2,000 megawatts of water power in the far north. You will find information with respect to the IPSP-related water power in an appendix to this deposition.

Moreover, in response to the encouragement of new renewable energy, approximately a dozen applications for water power projects led by First Nations communities have been filed with the Ministry of Natural Resources in the past year. These projects in particular, and the achievement of the government's broader energy and environmental goals in general, may, in my view, be compromised by the limitations in the proposed legislation requiring that land use planning be completed as a precondition of economic development. It would be far more reasonable, as was suggested by the advisory council, to provide a means for communities to pursue economic prosperity while land use planning is being undertaken. I would like to refer you to the advisory council's report in this regard under section 8, "Transition Strategy," which states that elements of a transition strategy could include "providing for community decisions to preserve certain lands, or to allow economic activity, in the absence of a completed and approved land

use plan in certain circumstances. Such decisions are expected to be based on community approval, consistent with the anticipated and expected outcomes of a community land use plan, and consistent with the outcomes of the overall far north initiative.”

Turning now to the bill itself, the OWA offers the following five suggested improvements.

First, a general comment with respect to the absence of economic activity and First Nations prosperity as a core tenet: As currently written, the bill primarily adopts a “by exception” approach to economic activity, particularly during the planning process. Notably, the bill’s title fails to incorporate as fundamental principles both the economic aspirations of First Nations and the cultural values upon which land use planning will undoubtedly be premised. I would submit that the act should be retitled “An Act with respect to land use planning, socio-economic prosperity and cultural and ecological sustainability in the far north.”

Secondly, the far north planning statements—and I’m referencing subsection 7(6); in my copy of the bill, it’s on page 4: This section provides the context for provincial policy statements that can guide land use planning, yet it fails to include renewable energy. To address this omission, “electricity generation” should be added to subsection 7(6) to read as follows: “Electricity generation, transmission, roads and other infrastructure.”

Third, development prior to the completion and approval of a land use plan—my reference here is to section 11; in my copy of the bill, it’s on page 10: As I outlined earlier, this section should be revised to incorporate the real possibility that decisions will be made by communities with respect to development and protection while land use planning is under way. Subsection 11(1) should be modified to read as follows: “If there is no community-based land use planning process under way”—all I’m doing is adding the words “under way”—“for an area in the far north....”

1150

This provision should also be premised on the requirement articulated in subsection 11(2)(a) that is currently restricted to transmission projects, namely, that “the development has the support of the First Nations that are affected.”

So two fairly simple amendments: that the planning process is under way as opposed to completed, and that the project has First Nations support.

Fourth, there is currently a restriction on economic activity that’s premised on “community use.” The reference here is to subsection 11(3)(a), and this is on page 11 of my copy of the bill. While it’s perhaps unique to electricity, I would argue that the limitation of “community use” unfairly restricts the potential of aboriginal communities to pursue renewable energy opportunities. Water power and wind power are where it is. A minor modification of this section to include projects that provide “community benefit,” as opposed to “community use,” and as defined by the community, would rectify this issue. The same amendment should be made to subsection 11(4)(c)(ii).

Finally, a comment on the concept of resource benefits sharing: The Premier’s announcement included specific reference to resource benefits sharing, yet no mechanism in this regard is apparent in the bill. A key recommendation advanced by the advisory council was the requirement for adequate funding to support and implement First Nations-led land use planning. It’s my contention, in fact, that in the absence of such investment by the province, the legislation will fail to achieve its stated intent. In this regard, it should be noted that the successful development of the identified water power potential in the far north would contribute, under current regulation, approximately \$50 million to the consolidated revenue fund on an annual basis. These resource royalties, or economic rents, could significantly advance and improve the capacity of far north First Nations to control and own their own destiny. At the very least, the minister should be provided with the regulatory authority to establish a special-purpose account linked to renewable energy development, the objective of which would be to dedicate revenue towards regional and/or community investment consistent with the purposes of this act.

In conclusion, committee members, I would ask that you reflect upon the significance of this proposed legislation; on the importance of Ontario’s far north to the province’s economic, environmental and renewable energy aspirations; and, most specifically, on the desires of the peoples for whom this special geography is a homeland.

Thank you. I’d be pleased to consider questions.

The Chair (Mr. David Oraziotti): Thank you very much, Mr. Norris, for your presentation. Mr. Bisson, you’re up first.

Mr. Gilles Bisson: Yes, I was—oh, boy—I got side-tracked there with a conversation with the clerk.

I’m trying to clarify a point here that you made. Can you go around the horn and come back to me?

The Chair (Mr. David Oraziotti): Okay. Government caucus, questions? Mr. Mauro.

Mr. Bill Mauro: Thank you, Mr. Chair. Yes, I’m happy to do that. Mr. Norris, thank you for being here this morning. Nice to see you again.

Near the end of your presentation, you talked about funding. I’m going to repeat what I’ve said earlier today—and I’m not sure if you were in the room—that in the 2008 budget, we committed \$30 million to this process and indicated that there is still a willingness on our part to enhance that capacity on a go-forward basis in partnership with First Nations. It’s important to know that. As well, there was a \$9.5-million contribution to First Nations through a \$25-million relationship fund for building capacity for exactly these kinds of things. I just think it’s important that you are aware of that, given your comment.

Mr. Paul Norris: Understood.

Mr. Bill Mauro: I want to thank you as well for your work as a member of the far north advisory council. I’m wondering if you could talk to me a little bit about that briefly, because I do have one other question, probably

my key question, in terms of the consultation piece, what you felt about it and how it went.

Mr. Paul Norris: My experience on the far north advisory council was a very unique opportunity to have direct and open conversation with interests that may have been perceived from the outside as not having shared objectives. I found, to my delight, that in fact, once we got in a room and had face-to-face conversations and built the relationships, we were able to generate a consensus report. I think that, in and of itself, is a remarkable accomplishment. I think, as well, the opportunities that we had to listen to and learn from members of the Nishnawbe Aski Nation throughout the process were very, very valuable. Certainly I would, as I did in my comments, commend both ministry staff and the other committee members.

Mr. Bill Mauro: Thank you for that comment. I'm good.

The Chair (Mr. David Oraziotti): I think Mr. Colle had a question for you.

Mr. Mike Colle: Well, thank you. I just wanted to thank Mr. Norris for the very thorough documentation he's provided with the maps. I know sometimes deputants bring in material and it's not appreciated. I just wanted to let you know that we do appreciate the effort that you went to to bring this forward. I think it's going to be very helpful.

I was struck by your opening comment that said that despite everything, while applications for more than 100 projects have been filed since crown land was made available in 2004, only three have been commissioned, for a total installed capacity of only 60 megawatts.

Mr. Paul Norris: That's correct.

Mr. Mike Colle: What's the problem?

Mr. Paul Norris: The key challenge is that the expectations for this industry, particularly with respect to crown land processes and the multiplicity and complexity of processes that involve the federal and provincial governments, are unique. It takes us longer. We generally start the conversations with a business-to-business relationship model focused on aboriginal communities. That's a matter of public policy and it's something that we take seriously, but it takes longer. In a world where we are looking to compete against who gets commissioned first, we find it very challenging to compete.

I think also that the renewable energy and climate change objectives of the government need to resonate across government. Hopefully, through the Green Energy and Green Economy Act, that matter of provincial interest, which again I don't see expressed in this bill explicitly, will start to be part of the foundation for everything that the government takes forward, be it social policy, economic policy or environmental policy. I think it's telling that we don't see renewable energy as a matter of provincial interest articulated in this bill.

The Chair (Mr. David Oraziotti): Thank you. Mr. Hillier?

Mr. Randy Hillier: Thank you very much. Interesting comments and worthwhile, and I'm glad you're here to share them with us.

I want to ask you this: You've mentioned it's very challenging to compete. You've also said the approach to development is by exception, development by restriction. Those, of course, dovetail with one another, the "challenging to compete" and also development by exception or by restriction. Do you see this bill, really, in its present form, even with some of the comments that you made earlier—is this going to improve the competitiveness or make it more difficult to be competitive?

Mr. Paul Norris: As currently constructed, it will undoubtedly compromise not only the ability for investment to happen in this sector, particularly in the far north, but also, I would argue, the achievement of the province's renewable energy objectives.

Mr. Randy Hillier: Absolutely. Of course, my concern is that this is not just impacting renewable energy and water, but we're hearing from a host of different people just how significant the obstacles will be, and the restrictions on challenges and competitiveness.

Mr. Paul Norris: Investment goes where investment is welcome.

Mr. Randy Hillier: Right. Thank you very much.

The Chair (Mr. David Oraziotti): Mr. Bisson, do you have a question?

Mr. Gilles Bisson: I do have a question. I wanted to pull out the legislation, the actual section 3. Are you saying—the long and the short of the point you make in 4—that the way the bill is currently written, the only way that that section would work is if it was for community use itself only, so therefore you should be looking at it as a net economic benefit, and that's why you need the expansion?

Mr. Paul Norris: I think it's particularly important in the context of electricity, so I'll only speak about electricity. We know that there are a number of diesel-dependent communities in the far north, and particularly northwestern Ontario. If you design a structure that says that community use is the test, generally you end up in a conversation of looking at individual renewable energy projects to provide electricity to a community. We all know that it doesn't work that way. It works in terms of an integrated system, in terms of—

Mr. Gilles Bisson: If there's a grid.

Mr. Paul Norris: —a grid. You could have like they have in Attawapiskat. You could have other mechanisms. But to go community by community by community from an electricity perspective doesn't make a lot of sense.

Moreover, though, and perhaps more importantly, communities aren't looking necessarily at that limitation in terms of what we've seen come forward and interest in the renewable energy sector. Benefit is a far more constructive approach to looking for community-led economic activity, in my view.

Mr. Gilles Bisson: Okay.

The Chair (Mr. David Oraziotti): Thank you very much for being here today. We appreciate your presentation.

Mr. Paul Norris: Thank you for your time.

1200

WINDIGO FIRST NATIONS COUNCIL

The Chair (Mr. David Oraziotti): The next presentation is the Windigo First Nations Council. I guess it's about good afternoon now, so welcome to the committee. You have 15 minutes for your presentation. Just state your name for the purposes of our recording Hansard and you can begin when you're ready.

Mr. Frank McKay: Okay. Thank you very much, Mr. Chair and members of the committee. My name is Frank McKay. I'm from Sachigo Lake First Nation and I work for Windigo First Nations Council. So I just proceed; right?

The Chair (Mr. David Oraziotti): Go ahead.

Mr. Frank McKay: Thank you. Nice to be here today. It's a nice day.

Windigo First Nations Council provides program, technical and advisory services to seven First Nations situated in northwestern Ontario. These include Bearskin Lake First Nation, Cat Lake First Nation, Koocheching First Nation, North Caribou Lake First Nation, Sachigo Lake First Nation, Slate Falls First Nation and White-water First Nation. Of these communities, Sachigo Lake, Bearskin Lake, Cat Lake, Koocheching, North Caribou and Slate Falls are a part or all of the traditional communities situated in the far north planning area.

Windigo First Nations Council, on behalf of their member First Nations, has had a long history of involvement in various planning efforts in provincial land and resource planning. These include the Royal Commission on the Northern Environment in 1986; Cedar Channels in 1986-87, which was a rebuilding of dams for an electrification project in our area; the Dona Lake, Golden Patricia and Musselwhite agreements, which is 1986 to the present day. We did a traditional uses study in 1992 for Cat Lake, Slate Falls and Mishkeegogamang First Nations. We conducted the Windigo Shibogama Ontario planning agreement in 1993 through 1998. We were at the timber management class environmental assessment hearings in 1987 through 1995. We had the Tay Bwaay Win: Truth, Justice and First Nations in 1990, and Lands for Life in 1996 through 1998, which was an MNR active forest management unit planning.

Windigo First Nations Council has been consistent in our persistence that First Nations should be involved in decision-making and planning of our lands and resources. We've attached an appendix giving you the brief history of these efforts. Recently, Windigo First Nations Council is developing two important initiatives with the province. One is the Windigo First Nations Council-Ministry of Natural Resources district engagement protocol to develop and implement a consultation process where any resource development or any activity is proposed on its member First Nations' traditional lands. The other thing that we have initiated is a four First Nations initiative agreement intended for co-operative planning for infrastructure such as all-weather roads, grid lines, hydro

electrification and winter roads for Bearskin Lake, North Caribou, Sachigo Lake and Muskrat Dam First Nations. All of these communities are within the far north planning area.

Cat Lake and North Caribou Lake First Nations have been and continue to be parties to the various Musselwhite agreements that address environmental, social and economic matters arising from the Goldcorp's Musselwhite Mine. These communities and Windigo First Nations Council entered into an agreement with Ontario in 1994 to create the Windigo Interim Planning Board, which produced Pemachihon, Sustained by the Land, a land use plan for the traditional lands of North Caribou Lake and Cat Lake First Nations. We have included that in our kit there—it's in green—and that's what we produced at that time.

The planning board was comprised of a number of representatives of various stakeholders and the First Nations. The board worked diligently and produced a draft plan. That draft plan was submitted to the province in 1998. In our opinion, that plan is representative of the kinds of plans this legislation will produce, if enacted.

The Windigo chiefs' position: The First Nations are signatories to the treaty. The First Nations of Windigo First Nations Council are members of Nishnawbe Aski Nation. The Windigo council chiefs' position has been consistently clear on land and resource issues, and that position is based on our treaty being a resource-sharing pact and not a land surrender.

Windigo First Nations Council will continue with their land use planning as the tool to rebuild our First Nations economies to sustain our First Nations as vibrant, healthy, independent communities. Windigo council chiefs will not accept the status quo of absolute provincial discretion in land and resource decision-making. Confrontation over land use conflicts must be replaced with a co-operative joint decision-making process that observes the autonomy of the First Nations to make their own decisions.

The Windigo council chiefs support the condemnation of the arbitrary imposition of a 225,000-square-kilometre protected area. However, the Windigo council chiefs will continue to work with the province in the recognition of land use planning through this legislation or an improved legislative process that is based upon the duty to consult and the recognition of treaty and aboriginal rights.

The Windigo council chiefs' position is that any further discussions or negotiations on the far north legislation be conducted directly with First Nations and tribal councils as it relates to their traditional lands and treaty territories, on a government-to-government basis.

Windigo council chiefs consider the proposed legislation an acceptable and necessary way to secure the plans that Windigo First Nations Council has commenced in order to build the necessary foundation for economic, social, cultural and environmental development. The legislation binds both the province and the First Nations to the approved community plans.

Windigo council chiefs oppose the recommendation to have appointed stakeholder boards that would prepare

community plans. Windigo First Nations Council opposes that recommendation because our communities live in the far north and are not stakeholders. Windigo First Nations Council only accepts First Nations-to-Ontario-government negotiations. First Nations involvement and consent is crucial to the successful administration of planning in the far north that secures our economic, social, cultural and environmental concerns.

A number of highlights we want to stress and amendments we want to point out:

Number one, Windigo First Nations Council has been involved in sustainable economic development; for example, the Musselwhite mine. The legislative process provides communities with the opportunity to define the categories of use and planning policies consistent with First Nations economic, social, cultural and environmental concerns within community plans.

Number two, First Nations can choose not to be involved in preparing community plans.

Number three, the legislation provides for some certainty because both the First Nations community and the minister sign off on the preparation of and final approved community plans. As a result of that, the development can proceed in an orderly fashion. That stability is essential to secure private sector funding for and involvement in the infrastructure projects Windigo First Nations Council is planning for their communities.

Number four, in our opinion, where there are no community plans, there will be no economic development.

We have specific recommendations for Bill 191. With respect to First Nations consultation, the provisions of section 3 addressing the Constitution Act, 1982, and specific provisions applying to the far north land use strategy—section 7.1—and far north policy statements—7.6—apply. Additional detail as to what that consultation involves with respect to the land use strategy—the First Nations need to be involved in that process, in the development of the strategy and policy statements. Also, Windigo First Nations Council recommends that provisions be made for adequate funding of community land use planning.

With respect to Bill 173, amendments to the Mining Act, Windigo First Nations Council has one recommendation: Provision needs to be made to ensure that commitments made to First Nations during the exploration phase be binding on subsequent owners of the claim. Our experience has been that commitments made during exploration may not be honoured when the claims are sold to other companies.

That concludes my presentation.

1210

The Chair (Mr. David Oraziatti): Thank you very much for your presentation. We'll start with the government. Mr. Mauro.

Mr. Bill Mauro: Mr. McKay, thank you to you and your colleague for being here today. We appreciate your taking the time to attend.

Just near the end of your presentation—again, as has been commonly the case today, people are referencing the funding associated with Bill 191. I'll mention again

as well that in our 2008 budget we did commit \$30 million to building capacity around the land use planning process, and we have indicated pretty clearly that we're willing to work with First Nations communities to try to enhance their capacity to broaden even that capacity-building process on a go-forward basis associated with the land use planning process.

I wanted to ask you, though, given your history and association with Windigo First Nations Council and the work with individual First Nation communities, if you could give me a sense of how you feel historically, going back, the process has worked in terms of bringing development on stream. As I see it here, what we're trying to accomplish is likely to enhance the ability and provide some certainty for industry and First Nation communities to arrive quicker than has previously been the case at a point where we can get some industrial development occurring on these lands, relative to what's happened previously. So I'm interested in a bit of a juxtaposition here: the historical context as well as where you see we might land as a result of this legislation.

Mr. Frank McKay: Historically, when we first started off, let's say, for example, in mining, we had to really go after the province and the federal government to assist us to get that industry to address our First Nations concerns. It was tough to get them to the table to come up with an agreement, the first agreement we had on Dona Lake. The only thing we could use was the Environmental Assessment Act, the federal—is it the federal one?

Interjection.

Mr. Frank McKay: The provincial Environmental Assessment Act. We asked for the full hearing to be conducted as a result of that mine. Otherwise, we—

Mr. Bill Mauro: So I guess my question is, and perhaps I need to phrase it better, would it have helped you historically had you had in place already a community-based land use plan?

Mr. Frank McKay: We have a community land use plan, but that was not recognized by the province.

Mr. Bill Mauro: Okay.

Mr. Frank McKay: And in this plan we have various areas that we set aside, including protected areas. One of the things that we couldn't grasp when the province announced 225,000 kilometres of protected area—what does that mean? They said no new forestry, no new mining.

Mr. Bill Mauro: There's no forestry now, though.

Mr. Frank McKay: We didn't support that statement, because some of our First Nations have agreements with exploration companies that want to go into those activities in the future. So we need this recognized by the province, that this is how we're going to proceed. Planning is a very key component to our First Nation in relation to economic development in this day and age.

The Chair (Mr. David Oraziatti): Okay. Thank you very much for your comments. It's time for questions. Mr. Barrett.

Mr. Toby Barrett: Thank you for the presentation on behalf of Windigo council, and thank you for coming

down to Toronto. You've done some really good work here in the way this is described. A lot of this really makes some good sense, the way you work with various levels of government and with the Ontario government.

Just a quick question: For this committee to get a better grasp of the way to go with both pieces of legislation that are before the Ontario Legislature, do you think it would have been worthwhile for members of this committee to go up to Cat Lake or Bearskin Lake or Slate Falls Nation or North Caribou Lake? You've got an airline that heads up through there.

Mr. Frank McKay: Of course.

Mr. Toby Barrett: What would we see up there? I know we're going to Sioux Lookout, but for some of those other communities, would it have been worthwhile to spend some time up there?

Mr. Frank McKay: I think it would be most worthwhile for this committee to be able to go to a remote community where we come from, to observe what we have to go through in relation to our daily living lifestyles, just so you can get a grasp of where we come from. When we come down to Toronto, here it's truly different from where we're at. I think you would have a better understanding of the remoteness factors that we have to endure for transporting our goods and services and so forth, and the way of conducting business in the north. There are a lot of challenges that we face in the north that you don't face in the south. We continually raise those concerns to the government, of those challenges.

Mr. Toby Barrett: Okay. I hear what you're saying. Thank you.

The Chair (Mr. David Orazietti): Thank you very much for your presentation and for coming in today.

Mr. Frank McKay: Thank you very much.

The Chair (Mr. David Orazietti): The committee is in recess until 1 o'clock. I ask all members to come back promptly. Folks, we'll be locking the doors here, so you have a couple of minutes to leave the room.

The committee recessed from 1216 to 1314.

CANADIAN BOREAL INITIATIVE

The Acting Chair (Mr. Mike Colle): Good afternoon, ladies and gentlemen. We'll start the post-recess deputations with the Canadian Boreal Initiative. Larry Innes is the executive director. Mr. Innes, you have 15 minutes, and then there's five minutes for questions.

Mr. Larry Innes: Thank you very much, Mr. Chair. It's a pleasure to be here addressing you today on two very important pieces of legislation that are before this House.

I'd like to begin by giving you a brief introduction to the Canadian Boreal Initiative and our work and then begin to frame out the response and the advice that we would like to offer this committee with respect to both the mining act and the far north planning act, Bills 173 and 191.

To begin, the Canadian Boreal Initiative is an organization that works in the corners between industry, envi-

ronmental groups and First Nations on the very pressing question of sustainability in our northern regions. We do this based on a framework, a vision, which has been agreed to and is supported by representatives from all of these sectors, ranging from leading forestry companies like Tembec, Domtar, Alberta-Pacific and others to organizations like the World Wildlife Fund, Ducks Unlimited and the Canadian Parks and Wilderness Society that work in the conservation sphere, but also with First Nations. From the Yukon to Labrador, we have deep and deepening partnerships with First Nations who understand that cultural sustainability, ecological integrity and a prosperous economy are, in fact, the cornerstones of a sustainable future for the boreal region.

This is not just a northern concern; this is something that affects us all. The boreal contains the largest storehouse of terrestrial carbon on the planet. It regulates the climate. It contributes tremendously to biodiversity, to migratory birds and to fresh water. There are countless other values within this region. Canada is one of the few places where this large, indeed, one of the largest intact ecosystems on the planet, still remains. We collectively, as Canadians, have the opportunity as a well-developed, law-abiding, prosperous nation to get the mix right.

We were very heartened by the Premier's announcement in July 2008, when he committed to a process premised on a real partnership. One of the things that is key to the framework, and I should outline its fundamental provisions, is that it calls for the protection of at least half of Canada's boreal region and world-class development where development occurs. We believe this is advanced through a process of land use planning and by working in partnerships with communities that are directly affected, including aboriginal communities, in a way that respects and reconciles their aboriginal and treaty rights. These, if you will, are the fundamentals of our approach, and we saw many of these approaches reflected in the Premier's July 2008 announcement.

I should note that this is a vision that has a strong scientific foundation. It is supported by over 1,500 scientists worldwide, by numerous organizations, by the communities and by the companies that we work with. It's also being incorporated into investment decisions being taken by ethical investors and indeed by the mainstream banks, which are now looking at boreal sustainability as one of their screens in making investment decisions on projects large and small throughout this region.

I should note, it's also been the experience of many of the communities across the boreal region that when they sit down to plan, when they identify those areas that are most important to them to protect for ecological and for cultural values, they're coming up with plans that indeed seek the protection of sometimes much more than 50%.

The Premier's vision very much accords with our own; however, it's important to look at the context of how this announcement was made and what was going on, both nationally and in the province in July 2008. You'll recall, of course, the very taxing summer for the mining industry and indeed for the community of KI.

Their leadership had spent the spring in jail because they had opposed exploration permitted by government within their traditional territory in areas where they did not want it to proceed. The only way that that could be reconciled under existing legislation was through conflict and, ultimately, through a jail term served by the leadership of that community—a truly regrettable result. It was also, I should note, something in the international forum. The United Nations at about the same time ratified the international Declaration on the Rights of Indigenous People, which enshrines the principle of free, prior and informed consent. That's the context in which this July 2008 announcement was made.

It's important to note that the Premier, in making this announcement, had many of the right ingredients. He focused on partnership, he focused on planning, and he focused on prosperity. He proposed to do so in a way that would create new mechanisms for giving voice to First Nations communities to determine their future and on new opportunities for those First Nations to realize the tremendous prosperity that is possible in this region. He also contextualized this by announcing a huge and, indeed, a globally significant conservation commitment.

1320

However, having laid out this menu, we have to consider whether or not, with the right ingredients, we actually got the recipe right. In both of these bills, the goal as we understand it is that development would occur in an orderly way in Ontario's northern boreal regions; that it would occur with the full participation and the consent of those First Nations most directly affected; and that it would therefore create the conditions for prosperity, led by community members in accordance with their own needs, in a way that would contribute to the economic health of the province as a whole and indeed sustain the ecological and cultural integrity of the region, which, as Grand Chief Beardy noted this morning, the members of the Nishnawbe Aski Nation have protected very well themselves for over 8,000 years. They've protected much more than 50%.

So what should this legislation do? I first want to turn to the Mining Act, to look at how these ingredients came out in the mix.

From our perspective, the most important elements of Bill 173, the proposals to reform the Mining Act, are those elements which enshrine a new permitting system in which exploration companies and mining developers will now have to work through a system of making application for permits, submitting work plans and then having these work plans and permits reviewed, obviously, by the ministry—but also the ministry undertakes a role now to consult directly with First Nations.

This is an important and significant innovation in Ontario's mining regime and it's one that we wholly support. The missing element, from our perspective, is to provide a strong role for First Nations so that they can exercise the right—and again, I'll quote the International Declaration on the Rights of Indigenous Peoples—of “free, prior and informed consent” before significant developments proceed within their territories.

There is an opportunity, I would submit, to improve the provisions of the bill which would give First Nations a direct role in permitting decisions under the legislation. I note that this is not unprecedented. There are, in the context of recent, modern land claim settlements, including the Labrador Inuit agreement in 2002, provisions whereby aboriginal governments participate directly as decision-makers in decisions on whether or not a work plan or a permit application is adequate, and they have the opportunity, in the event that they disagree in their decision with government, to have that arbitrated through a dispute resolution mechanism which, I would note, is provided for in the legislation but is not yet fleshed out.

As we look to the opportunities, it is not sufficient, in our view, for the requirements of sections 40 and 58 to simply refer generally to consideration of the issues raised by First Nations. We should actually be providing specifically for the consideration of whether or not those First Nations have consented to those activities, and if they have not, the onus is on government, through your treaty relationship with First Nations, to determine how to best accommodate those issues before you exercise your authority to grant those permits. This, in our view, would be a significant improvement and contribute directly to the goals of a prosperous economy, a well-planned industry, and a successful relationship between First Nations and developers within their traditional territories.

There's also a significant gap, in that the bill provides regulatory measures for considering what should occur—but one of the important elements of the Premier's July 2008 announcement was a provision for revenue-sharing. I know the government members will raise the fact that several commitments have been stated by government to share revenue directly with First Nations. There is an opportunity to enshrine this in this bill through the provision of mandatory impact benefit agreements at the stage where development becomes significant within traditional territories. Again, I note, this is not unprecedented. There are several jurisdictions, indeed, across the territorial north where impact benefit agreements are required before mining permits can be issued.

Having the parties most directly engaged in the activity—the developer and the community—working out their differences and coming up with their common positions together and submitting then a statement to government that, “Yes, we have reached an agreement,” would give government the confidence that the community has indeed consented to the development and has created a relationship with the developer which is going to secure that opportunity in both the short and the long term.

So those are our comments on the Mining Act.

I'd now like to turn to the second course, if you will, in the menu that the Premier laid out, and to look at the land use planning legislation.

Bill 191, section 6, states that the purposes of the act, the goals of the act, are to provide for a significant role for First Nations in planning, to provide for the protection of areas, including the establishment of a network

of interconnected protected areas to maintain biological diversity and ecological processes, and also to enable the sustainable economic development of the region in a manner that benefits First Nations. These are, of course, laudable goals and incredibly important goals not just to state but to achieve.

However, Bill 191 does not do this. It does not, in our analysis, give First Nations the leadership role that is required in determining what areas are to be developed and what areas are to be protected. At the end of the day, the bill contains “minister may” and “minister can” and very little “community will” or “community shall.” The consequence of this is that First Nations are ultimately in the position of being supplicants within their own territory. Having embarked on a land use planning process, they must then go to the minister for an approval. This is not—

The Chair (Mr. David Oraziatti): Sorry to interrupt. You have about a minute left in your presentation.

Mr. Larry Innes: I’m wrapping up. Thank you.

This is not the way that land use planning partnerships have unfolded elsewhere in the country. I speak from knowledge on this, having worked right across Canada’s north in many land use planning processes under many different governments. The mechanism for doing land use planning is the establishment of a board that has equal representation of First Nations and government members working together to facilitate a consensus outcome that respects, obviously, the paramount interests of a community in ensuring the integrity of a territory and the opportunities that it has before it and, indeed, the interests of all Ontarians, or all residents of that jurisdiction. That is, unfortunately, absent from this bill, and it would be a substantial improvement to include it.

There are several precedents that I can cite for you: the Deh Cho process in the Northwest Territories; the mechanisms under the Sahtu Dene and Metis land claims. The Yukon planning model, given the diversity of the regions that you’re working in, may be something well worth looking at. It provides for a broad area planning council and the establishment of specific planning commissions in which communities and government members work together to define the terms and conditions for land use planning. Of course—

The Chair (Mr. David Oraziatti): Thank you. That’s time for your presentation. We appreciate that.

Mr. Larry Innes: Not a problem.

The Chair (Mr. David Oraziatti): We’ll go to the Conservative caucus first.

Mr. Randy Hillier: We’ll pass.

The Chair (Mr. David Oraziatti): No questions. Government caucus? Mr. Brown.

Mr. Michael A. Brown: Thank you, Mr. Innes, for coming. I truly appreciate your insight on some of these issues and your experience in other jurisdictions.

It’s contemplated within this act that there be community-based development plans before anything happens at all. We just had a number of First Nations this morning, and I’ve heard from others, that want to be clear that they want these decisions made by the First

Nation, not by another body. What you’re suggesting, and I’m just trying to clarify, is that the planning authority be First Nation representatives with representatives from the province. Is that how you see that unfolding as a First Nation-to-government relationship on these boards? It’s individual to each planning area?

1330

Mr. Larry Innes: That’s a great question. In fact, the way this is normally done is that you have a jointly constituted board, often led by an independent chair in which both parties have confidence. That board then works under a mandate set out broadly in legislation but is often specifically developed to deal with the context in which planning occurs. In the Yukon, for example, you have 16 First Nations, each of whom is able to establish a planning commission in partnership with the other levels of government, which then work to complete a plan that is then under the broad supervision of a body actually established in the land claim that works as sort of a connecting council across those 16 regions.

Mr. Michael A. Brown: So there are two tiers? This is what you’re saying, there’s an overriding body of—

Mr. Larry Innes: A regional body.

Mr. Michael A. Brown: A regional body, and then underneath that—

Mr. Larry Innes: A local body.

Mr. Michael A. Brown: —a secondary, local body.

Mr. Larry Innes: Absolutely.

Mr. Michael A. Brown: We’ve heard from at least one First Nation saying, “We’re not seeing any of this. Is anybody? It’s us and the government.”

Mr. Larry Innes: It’s important to understand that the role these boards play in other jurisdictions is really a facilitative one. Decisions are ultimately left in the hands of the communities directly affected and in the hands of the government on those matters that fall solely within government’s jurisdiction. It’s the context in which that partnership for making those decisions, both local and regional, occurs that is so important to get right in this process.

Mr. Michael A. Brown: But it’s still the local one, the First Nation.

Mr. Larry Innes: Correct.

Mr. Michael A. Brown: Thank you.

The Chair (Mr. David Oraziatti): Thank you very much for your presentation. We appreciate you coming in today.

COALITION FOR BALANCED MINING ACT REFORM

The Chair (Mr. David Oraziatti): Our next presentation, the Coalition for Balanced Mining Act Reform. Good afternoon and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. If you could state your name for the purposes of our recording Hansard, you can begin when you’re ready.

Mr. Charles Ficner: Thank you very much. I wonder if you can bring up the—

Mr. David Gill: We have a presentation on PowerPoint, here. I'd like to see if we can get it up on the screen.

Interruption.

Mr. Charles Ficner: I apologize for this.

Mr. David Gill: Mr. Chairman and members of the committee, I'd like to introduce myself: David Gill. I'm an economist. I work for the Treasury Board for the federal government of Canada. I currently manage a group of about 20 people who are business analysts and business intelligence analysts. I, through various reasons, have gotten involved in analyzing what's going on in mining. We are a coalition that has been developed and we have quite a broad support from various associations—cottagers' associations, lake associations—throughout eastern Ontario. We have definitely very good support from municipalities, including Ottawa, Kingston and Peterborough, who have supported our three modest proposals that we've put forward and have in fact petitioned the government of Ontario to please endorse and include those three modest proposals.

Our presentation today is going to be given by Mr. Charles Ficner, and I'll allow Charles to introduce himself and prepare the presentation.

Mr. Charles Ficner: I am also one of the founding members of the Coalition for Balanced Mining Act Reform. My background is as a policy director and strategic planner in the federal government. I've been responsible for developing many policies and programs, making submissions to cabinet, to the Treasury Board, and some of those have resulted in programs that have cost taxpayers of Canada some \$2 billion. So I'm very familiar with the process of policy development.

I'm very familiar, as well, with the role that you have and with the difficult task you have in trying to make sure that as we move ahead, the laws that you approve are actually the laws that you intend to approve.

One of the points that I would make is that as a bureaucrat you become very much aware of the relevance of the comments of Sir Carleton Kemp Allen in *Law in the Making*. Bureaucrats, in drafting legislation, can, like the Delphic oracle, make it impossible for you to understand what's going on. They can overwhelm you with detail and bury what they want to do. That is what it appears has happened here.

If we look further at what happens through the regulatory process, and this bill is replete with proposals to do things through regulation, one finds that the belief that there is proper, even cabinet scrutiny of regulatory procedures is very much mistaken. Ministers are asked to sign and they presume that someone else has done the work. Bureaucrats can do very much what they like to do.

I think it's important when looking at this bill to get some context that deals with mining, and there's been a lot said about mining and the importance of mining. It's vital to realize where mining actually fits within the

balance of Ontario's economy. Less than one job in 500, less than 2% of GDP; that's less than half of agriculture, fisheries and—

Mr. David Gill: Forestry.

Mr. Charles Ficner: And forestry. So it's not the only thing that applies broadly on lands. Mining is a very small contributor to provincial revenues, 0.4% of provincial tax revenues. Mining companies pay taxes at the lowest tax rate of any corporate group and while there is a special mining tax, when you analyze the details, what you find out is that for every dollar paid in mining tax, mining companies can deduct \$1.40 from their income tax. Apart from diamonds and the royalty on diamonds that was introduced in 2007, there are no royalties whatsoever on minerals extracted in this province. Danny Williams in Newfoundland introduced a royalty on oil: minimum 30% of sale price, increasing to 50%, and that's off the top. It's not a percentage of profits, it's of sales. Newfoundland then became a part of the process of ownership and it takes profits there too. In this bill, one sees evidence that the presumption continues that was criticized by the Environment Commissioner: that mining trumps everything, so much so that it makes it very difficult for other departments with other policy positions to implement their policies, and that is very clear. None of that has changed as the underlying premise of this bill.

This bill, in fact, has provisions that treats citizens differently, affords them different protections of the law depending on where they live. If you live in the southern part of the province and the crown claims to own the minerals under your land—a small percentage of land, 1.4%; almost everyone owns the minerals—the bill says that your land will no longer be subject to claim-staking and exploration. If you live in the north, you don't get that protection. If you live in the very far north, you do get the protection of having a requirement to have community-based land use plans in order to determine where mining is appropriate and in balance. In the south or in the near north, even though you have a requirement under the Planning Act to prepare such plans, those plans are routinely overridden, and mining trumps those plans.

1340

The bill is also replete with examples of turning the power over to officials—arbitrariness throughout. What we have on this slide are just a few examples of some of that arbitrariness: Decisions of the minister are “final”; the minister may, “at his ... discretion”; the minister's order is “not appealable.” The minister's order is not appealable even if it is in violation of the provisions set out under the acts of this Parliament that deal with regulations.

David, could you go back for just one second? Decisions, it states explicitly in the act, are not open to attack in any court by reason of the omission of any act or thing. In other words, if things were supposed to be done and were not done, you still, if you are the victim of this arbitrariness, cannot appeal anywhere.

It goes through the bureaucratic process as well, and you see these terms such as “such terms and conditions” as the commissioner orders, as the “recorder [considers]

appropriate.” It appears everywhere. You find, even with respect to the provisions in the act and the regulations, that substantial compliance is all that’s required. There’s no need to fully conform.

Our coalition has put forward three modest proposals, proposals for very modest change to begin to bring mining into balance. One relates to treating all property owners equally. You’ve heard a lot about the small percentage of land where the property owners do not own the minerals under their land. In the province as a whole, of the private property owners, that amounts to about 1% of property owners; 99% of property owners own the minerals. It’s 98.6% in the south and 99.6% in the north.

What did Parliament say before? Parliament made its will absolutely clear. If you go back to the General Mining Act of 1869, it says the owner shall own the minerals; any gold and silver reserved is hereby transferred to the owners as though it was granted at the time of original sale.

The Public Lands Act of 1913 confirmed this for everything. It said, in its provisions, that for every piece of land previously sold without the minerals, we add the minerals; every piece of property we sell from here on will include the minerals. It avoids the conflict between a landowner and a mineral rights owner. We will have only one owner for land and minerals.

That’s not how bureaucrats see it. Bureaucrats have made it absolutely clear. They levy a tax on some such properties. The tax is intended to return the land to the crown—absolutely confirmed written statements by very senior officials. No compensation is paid to the owner. The crown doesn’t benefit. Taxpayers don’t benefit. Instead, we give the confiscated properties to mining companies for their private benefit. Is that what you as legislators want, that the government of Ontario should be given the right to tax property from citizens and take it away so that it can be given to mining companies?

That’s what bureaucrats state, and that’s in complete contradiction with the provisions clearly demonstrated by Parliament, including a provision in 1997, Bill 68, by which the crown said that all of those minerals that we repossess from Canada Co. lands are to be given to the owners of the properties who own those lands. Parliament has been clear on this: one owner.

David, you’re way ahead of me here. Okay, sorry. Move ahead.

As I said, there is a requirement in this bill that says that in lands in the far north, you must have a community-based land use plan. There is now a requirement under the Planning Act, another act of this Parliament, that says communities in the south—municipalities—must have a land use plan. There’s a very complex process for developing it. Routinely, what happens is that those plans are overridden by officials at MNDM. When their plans are sent to municipal affairs and housing, they are distributed around the ministries, and then they come back and the municipalities find—having said that the most appropriate use is agriculture, recreation or whatever—that the most appropriate use is designated as

mining. So the community-based land use plan is thrown out.

The initiative in the north is excellent, but why treat people differently? When we have a charter that says everyone is entitled to equal protection and benefit of the law without discrimination, why do we treat people differently? Why do we have an act that overrides another act and says that it applies here but not there?

The act and the bill are replete with arbitrariness. Section 175 of the act is, one would have to say, an abhorrent provision, but it’s only illustrative. What it says is, if a mining company decides it would be convenient to have access to other lands, it can go to the commissioner and ask for approval to have them and the commissioner can give that approval.

The Chair (Mr. David Orazietti): Just to remind you, you have about a minute left.

Mr. Charles Ficner: These are the kinds of things that can be done: discharge water upon any land, use any land, lower the water in any lake or river, do anything that’s convenient. And it ends up with a provision to deposit their tailings or slimes or other waste products upon any land or to discharge the same into any water. This was not ignored in the preparation of Bill 173 because this provision was added to. There’s an extra clause, and a number of these clauses were strengthened. Is that what this Legislature wants: for us to live under laws where that arbitrariness is permitted? We would hope not.

We would suggest that section 175 be replaced with provisions that require an open, public review of all mining development activities, proposals and exploration activities before the mining exploration or development can take place—

The Chair (Mr. David Orazietti): Thank you. I’m going to have to stop you there. That’s time for your presentation.

Mr. Bisson, you’re up first, if you’d like to go ahead.

Mr. Gilles Bisson: Where to start? You’ve said quite a bit there. The last slide you just had, if you can back up—the last point: require an open, public review before mineral exploration. I understand the next part—advance exploration and mining—but when it comes to staking, are you asking that open, public review be affected on staking as well?

Mr. Charles Ficner: We’re not saying on staking; on the exploration activities.

Mr. David Gill: If I could just answer quickly, in our view, public lands would be staked, but no development of any kind could go forward without an impact analysis, which isn’t just environmental; it’s legal, it’s economic, it’s cultural. There are a lot of other areas that need to have analysis done.

Mr. Gilles Bisson: And to those people involved in the mining industry who would say that’s an onerous provision to put on them when it comes to development, what’s the argument there?

Mr. Charles Ficner: We understand that. We actually participated in the consultations in Timmins, and some of

the prospectors said, “We have an absolute right to go on to any land and say, ‘This belongs to us,’” and our response to that comment was, “Well, it seems like it’s an extraordinary privilege to be able to go on public land and say, ‘All of the minerals here belong to me.’”

Mr. Gilles Bisson: No, I’m talking about the—

The Chair (Mr. David Oraziotti): Folks, that’s time for your questions.

Government caucus, Mr. Brown?

Mr. Michael A. Brown: Thank you for your presentation—interesting.

What would you say to the people of Timmins or Sudbury or of other large mining communities about the revenue that they receive through the taxes that their workers pay, the contribution that all of the people who work at the mines provide to the local economy? It would be far greater than the 0.2% that I think you’re quoting here. You’re probably talking directly about what the mining company itself pays rather than what the workers and others in the community contribute.

Mr. Charles Ficner: We clearly say there are three requirements to be met. One is, treat all property owners equally; give back the minerals that the crown confiscated from the 1.4% in the south and the 0.4% in the north; make mining conditional on community-based land use plans. So if Timmins or other areas wish to have mining take place and it’s an appropriate activity, absolutely. Mining is not something that should be stopped—we need minerals development—but it needs community land use planning input. And in terms of the impact assessment on health, water and other people’s livelihood, we believe that is an absolute requirement. You just don’t say to someone, “You can go dig and drill and remove the overburden,” without considering the impacts. Those things need to be considered.

1350

We are seeking simply to put mining into a real balance, and we would hope that the members of this Legislature would want that too. We are not seeking to stop mining or to stop communities from doing it. But we don’t want to see damage done to other communities or other persons by the arbitrary decisions that override these local plans.

The Chair (Mr. David Oraziotti): Okay, thank you. That’s time for questions. Mr. Hillier?

Mr. Randy Hillier: Thank you very much for a wonderful presentation, with such clarity about not treating people differently and not allowing government to usurp our own sense of freedoms and justice in allowing some groups benefits or privileges at the expense of others. I think that’s really the crux.

You’ve got three modest proposals. If I can just reiterate them, if I’m clear—or maybe I’ll allow you to just reiterate what those three proposals are. I think there were two that you just mentioned.

Mr. David Gill: I think, perhaps, the thing to understand is that all of crown land, public land, is open. All of private land essentially is open, if a private person wants

to develop minerals on their land. So, modest proposal 1 is simply just single ownership of all land.

Modest proposal 2 builds on that and says that private land, or crown land—if mineral exploration and development is going to occur, then it has to be right for the land use plan of the community around.

Mr. Randy Hillier: Much like zoning for any other—

Mr. David Gill: Something like that. Then the third one would be that if you have a rogue community that doesn’t care about what it’s doing to the river, and downstream the communities are going to suffer, therefore there needs to be impact analysis: environmental, legal and so on and so forth; particularly economic because we know that tourism, cottaging and so on have a huge input to the economy and can be dramatically impacted by mining.

The Chair (Mr. David Oraziotti): Very briefly, Mr. Hillier.

Mr. Randy Hillier: Just briefly, you also mentioned that you were involved in the consultation process, that you were in Timmins when these proposals—

Mr. David Gill: We were at two of the consultations.

Mr. Randy Hillier: —were brought forward to the government, through that process.

Mr. Charles Ficner: These proposals have been endorsed by a large number of cottage groups, environmental groups and citizens’ groups, and by a large number of municipalities, who formally petitioned the province to include these in Bill 173. Those cities include Kingston, Ottawa and Peterborough, and a large number of other municipalities. None of these provisions have been incorporated.

Mr. Randy Hillier: Thank you very much.

The Chair (Mr. David Oraziotti): Thank you. That’s time for your presentation. We appreciate your coming in today.

ONTARIO PROSPECTORS ASSOCIATION

The Chair (Mr. David Oraziotti): The next presentation is the Ontario Prospectors Association.

Folks, we’ve got a very lengthy afternoon agenda so I’m just going to remind people to try to keep their questions as concise as possible.

Mr. Gilles Bisson: You’re doing your chair job.

Laughter.

Mr. Gilles Bisson: Or you’re doing your job, Chair.

Interjections.

The Chair (Mr. David Oraziotti): Good afternoon, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. State your name for the purposes of Hansard and you can begin your presentation right away.

Mr. Garry Clark: My name is Garry Clark. I’m the executive director of the Ontario Prospectors Association.

The Ontario Prospectors Association is a provincial organization representing seven regional associations. The regional associations are located anywhere from

southern Ontario, Sudbury, North Bay, Timmins, Sault Ste. Marie, Sioux Lookout and Thunder Bay.

We'd like to thank the Chair and the members for allowing us to respond to Bills 173 and 191.

Just a background on myself: I'm the executive director; I'm also a professional geologist in the province. I was a member of the industry input group in 1990 when the Mining Act was last majorly amended. I've been a member of the minister's Mining Act advisory committee since 1990 and I'm presently chair. I was also a member of the minister's far north advisory council and I was chief negotiator for the exploration industry to disentangle claims that were caught up in the Ontario Living Legacy sites. I'm also an active exploration consultant based in Thunder Bay and a prospector who has optioned numerous properties to junior companies and senior companies within Ontario.

We understand that Bills 173 and 191 are enabling legislation. Some of our fears are that there's too much reliance on regulation development. We think there needs to be more confirmation of direction of where the bills are going. We recognize Bill 173 is funded to the point of \$40 million to amend the Mining Act but we're not sure this is enough, and Bill 191 has no funding put with it, though estimates are \$300 million just to do the land use planning development itself. There is no funding presently in place to fund the required geoscience and other science components that need to be done to do wise land use planning. We believe that Bill 191 missed the mark when it was written and it should be squashed.

Just briefly, some insight that we see from Bill 173: Map staking is endorsed within Bill 173. There's the possibility of the loss of prospectors' sweat equity when they're staking if we go to a map-staking basis. There's loss of entry positions. That's the position that you start at making some money when you're staking. There's fear of deep pockets taking all the lands, depending on how a map-staking system is set up. The First Nations economic impact and economic stimulation in the far north comes from when the stakers show up in the community and need to buy various goods and services. Prospectors are using staking as income in the winter when they can't prospect for minerals. There's a possibility that there's a socio-economic impact study needed. The other consideration, if we go in the map-staking direction, is that we do not have consistent high-speed Internet access across the north. That's something that is very important to have. It's great to say you can stake a claim from China in Ontario when some people in Ontario can't get on to stake a claim because they don't have high-speed.

One worry is certainty and security of investment. The proposed amendments are very vague on detail and rely greatly, as I've mentioned, on regulation. We're seeing right now that our explorers see similarities to what happened in BC, and some of them are shying away from Ontario, worrying about what is going to be the outcome of Bill 173.

We do see work plans as described in Bill 173 and work permits as a viable method of informing First

Nations communities that exploration is about to occur within their traditional lands. Potential delays at the First Nation level, though, may set exploration back, and exploration permits going into the community will always be behind social issues for evaluation purposes.

An arbitrator is mentioned within Bill 173. It is welcome, but the strength of the legislation and the definition of this arbitrator are not presented, and we think that the procedures and definition need to be strengthened within the bill. Explorers need flexibility when they're working within their projects to react. As you find something, you may change the direction. If you have to go back to the work plan to amend it, you may lose part of a season.

There's a director of exploration mentioned. These roles and responsibilities are not well defined in the proposed legislation and the potential, the way it's defined, is another level of bureaucracy to slow down exploration and slow down accessing the land. There's also an inspector of exploration that's mentioned and described. This is actually welcomed by a lot of our members. The only problem is that there are some very unchecked powers that are defined in the legislation as it sits now, and that position needs to be refined or redefined.

The other worry we have with work plans and work permits is that in 1996 we got rid of work permits, and at that point it was up to our own recognizance to be able to operate under other laws within Ontario. We do not see the reason to send these documents as work permits out to MNR, MOE or MOL. If that happened, I think what would occur is we'd be under a microscope all the time. Right now, we work under our own recognizance and we follow the legislation, and there have been very few problems with that.

1400

On withdrawal of mining rights: We're worried about the exploration economics being compromised. If there is a piece of land that's withdrawn and you're working on land that's staked beside it, if you start moving toward finding an ore body and moving toward that land, there's no method of reopening the withdrawn lands mentioned within the proposed bill and there's no method for assessing the land in northern Ontario that possibly could be withdrawn. We think there's potential for socio-economic implications to Ontario with lands being withdrawn.

The prospectors' awareness course, we believe, is a very good idea to educate prospectors on ethics, other stakeholders' rights and best practices. The only problem with that is that 90% of the people doing the exploration on the land are not licensed prospectors and these are the ones who need some awareness also. There is a thing called a 25-year or permanent license, and some of these licence holders should be exempt from having to take this awareness course.

Certainty, security of investment under Bill 191: It presently states that there are no new mines until land use plans are completed, and therefore no new economic stimulation. If a claim is there now and it's found to be

protected lands, what occurs? We all remember what happened with Ontario Living Legacy. It took me three or four years to disentangle some of these lands even though we were guaranteed that everything was fine. The length of time to do a land use plan means that those explorers probably will sit on the sidelines and wait until the land use plans are completed in some cases. There is no trigger within Bill 191 to say when there would be a land use plan started, and explorers would get to a certain point without a land use plan, would then stop their projects and sit on their hands.

Who's driving the plans: Communities need to drive the plans with some form of panel/board approving and overseeing the process. This panel/board would look at the total landscape of the north and make sure everything is balanced so that there is a flow of land use plans across the various areas.

Protection versus conservation: The land is already protected by its geography in the far north. Explorers need large volumes of land to explore. The area of protected areas and connectivity scares explorers. They're worried that there will be connections of all the protected areas, which will create isolation and prevent access/service corridors to the communities and the economic sites.

Adequate funding: We don't know the geology very well in the far north. The government needs to assess the mineral potential in the far north. Protection of high mineral potential is as valid as protecting flora and fauna for our grandchildren.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We'll go to the government caucus first. Mr. Mauro has questions for you.

Mr. Bill Mauro: Mr. Clark, thank you for being here and for your presentation.

Mr. Brown and I are going to share this, so I'll get this out as quick as I can.

You talked about the planning board or some planning process going forward under Bill 191. Section 16 states—I'm not sure if you're aware—"The minister shall establish one or more bodies to advise the minister on the development, implementation and coordination of land use planning in the far north in accordance with this act." The subsection goes on to state: "When establishing a body ... the minister shall consider what role First Nations should play in the establishment of the body...." So it is contemplated and it is going to occur.

The second part I wanted to ask you about, however, was you made a comment about security of investment or return on investment—I'm not sure what it was. My question is, how does that exist today? What's the current climate, compared to where we think we're going to land? Should this pass and this legislation go forward, how are the two going to compare? It would seem to me today, given the uncertainties that exist—and we hear that all the time as industry moves into these areas to try to do their work—there is so much uncertainty in the process now, so I'm wondering how you contemplate this can't be better or how it could make it worse.

Mr. Garry Clark: I think it can be better. The worry is how long it will take to get to the point of a plan. The other point is that you can go into an area and work and there won't be a plan and you don't know when the plan will be developed, so you have no certainty that you will mine because it says no new mines will go forward without a plan. I know there is the provision that says that the crown can overrule that and make things go forward, but frankly, the industry—and it's not just Ontario-based, but worldwide—doesn't trust that type of clause.

Mr. Bill Mauro: But there is an accommodation for some interim work to go forward. For example, on mining work, feasibility studies could still go forward and economic—a lot of things could still occur in regard to that. If a mine was—

Mr. Garry Clark: But still, without the point of knowing when the plan is going to be complete, you could have a full pre-feasibility or a feasibility study saying it's economic and you could be hung up waiting for that plan.

The Chair (Mr. David Oraziotti): Mr. Brown, if you have something briefly, you can add.

Mr. Michael A. Brown: Thank you, Mr. Chair. Good to see you, Mr. Clark.

I was surprised by the number, that 90% of the prospecting is done by non-licensed prospectors. Could you explain that to me? It's a new number for me.

Mr. Garry Clark: In the exploration business, the very bottom end of exploration is usually the prospecting end. Under the act, prospecting is actually anything that's done as exploration, but the prospector himself is only required to have a prospector's licence if he's going to stake claims. He doesn't have to have a prospector's licence to do the assessment work to keep the claims in good standing. So when you go on a project, you'll see that there is no one there who actually needs to have a prospector's licence to complete the work to keep the claims in good standing.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: I have a couple of questions, but a couple of statements first. I found it quite interesting that you share a lot of the same concerns with the previous presenter with regard to the regulatory burdens and how much reliance there is in the act on the regulations, and also the concept of community-based land use plans.

I'll ask two questions. First off, were you also involved in the consultation before the Premier made that announcement on 50% protection in the north?

Mr. Garry Clark: No.

Mr. Randy Hillier: You weren't.

My question is just on the withdrawal of mining rights. This has come up a few times today. Under the present proposal, once those lands are deemed to be withdrawn, there is no avenue for them to come back in in southern Ontario. However, if those properties and those rights were unified—the mineral and the surface rights—then of course the prospector could continue to enter into negotiations with the private owner.

Mr. Garry Clark: It would be similar to what we do now, yes.

Mr. Randy Hillier: Right. A little bit more streamlined—and have potential access.

Mr. Garry Clark: It would be nice to be able to stake them and not have to—

Mr. Randy Hillier: Anyway, thank you very much for your presentation.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: The act, in short, says that in the end we're going to protect a minimum of 50% of what is in the far north. You made the point that we know little of the geology of the far north, which I well understand. The only two producing mines up north are Musselwhite and De Beers. My question is simply this: Twenty-five years ago, let's say, would they have declared that as an area that's interesting when it comes to minerals? Would there have been any way?

Mr. Garry Clark: The discovery was made by De Beers in 1983. But yes, previous to, say, 25 or 30 years ago, you'd be hard-pressed on the De Beers deposit, in my opinion. Actually, the Musselwhite brothers started exploration on the Musselwhite deposit in the 1950s, looking for gold at that point.

Mr. Gilles Bisson: My point is, the difficulty we have with this is that we don't know a lot about the geology of the far north, and what is not geologically interesting today for mining may very well be, given new technologies as they move forward and the more work we do in aerial surveys, sediment work etc. I think we all agree with the premise that we need to preserve as much as we can in the far north and not expose it to development that will be harmful to the environment. How do you get there without doing what they're doing?

Mr. Garry Clark: Without parking it or protecting it that way?

Mr. Gilles Bisson: Yes. How do you get there?

Mr. Garry Clark: I think you actually leave on a status quo situation. At the present time, the geography protects it. The First Nations do a good job, and I know they would say the same thing, that they protect 100% of it. We impact on a very small piece of it as we go through. I think the science can be done, but it's very expensive.

The Chair (Mr. David Orazietti): Thank you very much for your presentation and for coming in today.

1410

PROSPECTORS AND DEVELOPERS ASSOCIATION OF CANADA

The Chair (Mr. David Orazietti): Our next presentation is the Prospectors and Developers Association of Canada. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. Whoever will be speaking, please state your name before you speak. You can begin your presentation right away.

Mr. Jon Baird: Hello. I'm Jon Baird and I'm the president of the Prospectors—

Mr. Gilles Bisson: I know John Baird.

Mr. Jon Baird: I have to tell you, there is no "H" in my name. J-O-N. That's the distinguishing point, if you will.

Mr. Bill Mauro: It's not the only distinguishing feature.

Mr. Jon Baird: When I was interviewed by CBC, the interviewer said, "Mais celui-ci est très gentil." "This one is the nice one."

I'm here to represent the PDAC, and I'm here with my colleagues Philip Bousquet, the PDAC's senior program director; Jason Wilson, PDAC program director for aboriginal affairs and resource development; and Michael Hardin, an external legal consultant who has worked with us in preparing PDAC's submissions that respond to the Ontario government's Mining Act and Far North Act proposals. We thank you for inviting us and providing us with an opportunity to meet with you today.

For those who don't know, the PDAC is a national association formed here in Ontario in 1932 whose members are involved in the mineral exploration and development industry, both in Canada and around the world. Our membership includes over 1,000 corporate and 6,000 individual members, comprising mining companies, junior companies, service and consulting firms, geoscientists, prospectors, students and the financial and investment sectors. PDAC organizes an annual convention here in Toronto which is the world's premier mineral industry trade show. In 2009, our convention attracted over 18,000 delegates from 120 countries.

This committee has been asked to review two significant legislative proposals that would fundamentally change the way that mineral exploration and mining are carried on in Ontario. Following a careful review of these proposals, the PDAC has concluded that neither bill should be enacted in its present form. It is our recommendation that Bill 173, regarding the Ontario Mining Act, be amended in a number of areas prior to further consideration by the Legislature, and that Bill 191, the Far North Act, be withdrawn.

Our rationale is detailed in our submissions that have been posted on Ontario's environmental registry. Copies have been distributed to the committee. I will briefly outline our key points, but prior to doing so, however, I would like to provide the committee members with some background on the context within which this legislation is being considered.

We're now at a time when the prices for the commodities produced by the mining industry are at historic low levels, operations are being closed, miners are being laid off, their suppliers' revenues are shrinking, and investment in mineral exploration and mine development is drying up.

In recent years, Ontario has attracted about 5% of the world's expenditure for mineral exploration. This is as much as \$500 million a year, which has provided valuable employment for people in urban, rural and remote areas of the province. Because of the current downturn, however, this year's exploration spending is expected to be only about 50% of last year's total. On top of this, we

now have the uncertainty of new legislation, which will have unknown effects on future investment, discovery, mine development and job creation in the province. Prior to advancing such legislation, you need to know that you have it right. Your work on these bills will affect communities throughout Ontario in the short term and for many years to come. If the government of Ontario, after consultation with environmentalists, industry, aboriginals and other citizens, does not achieve wise, fair, clear and balanced approaches through these new laws, a great deal of wealth creation, benefiting all the citizens of the province, will be wiped out.

How important is a mine? In a recent study by the Ontario Mining Association, a model mine in northern Ontario with a modest annual revenue of \$270 million created 480 jobs in production, 1,103 jobs in the upstream supply chain, plus another 697 positions in the economic activity generated when the employees and suppliers spent what remained of their wages after taxes and savings. Thus, the mine employs 2,280 people. Of course, the mine and everyone connected with it pay taxes, further benefiting all of the citizens of the province.

The millions that the industry and investors direct to northern Ontario for mineral exploration and mining are the single best generator of economic activity that can be envisioned, particularly for those living north of the 51st parallel. Industry therefore has an important place in the discussion surrounding the mineral exploration and land use planning regimes that the government has proposed.

The exploration, mining and financial industries, as well as the private citizens who are investors, have a lot at stake here. To some degree, these elements of society are represented by associations like the PDAC, Ontario Prospectors Association, Ontario Mining Association and others from whom you will be receiving advice. But make no mistake about it: The industry that really counts will make its own analysis, and it will vote with its feet. Ontario risks losing investment and wealth creation very rapidly if the new legislation is not wise, fair, clear and balanced.

I will now turn to the legislation and offer a few comments, beginning with Bill 191, the Far North Act.

As committee members are aware, Nishnawbe Aski Nation, or NAN, have expressed grave concerns regarding Bill 191, and NAN has formally resolved to prevent its passage. I will not detail their reasons for opposition, as First Nations communities, organizations and individuals are raising these with you directly. However, as a representative of the PDAC, I can express my agreement with NAN's concerns and state the following reasons for the PDAC's recommendation that Bill 191 be withdrawn.

The PDAC contends that Bill 191 in its present form would deprive all of the citizens of Ontario, particularly First Nations communities that make up most of the population of the far north, of the economic benefits that responsible mineral resource development can provide.

Bill 191 fails to provide First Nations with an appropriate and clearly defined role in the land use planning process.

Bill 191 seriously compromises the ability of the minerals sector to operate in the far north by reducing the land base available for exploration by 50% or more, relegating the minerals sector to a peripheral role in land use planning, and damaging investor confidence in mineral exploration activities in the region.

1420

Finally, Bill 191 fails to achieve an appropriate balance between responsible economic development and protection of the unique cultural, social and environmental values that the far north embodies. Land use planning is a complex process. The end result, though, needs to encourage investment that best uses the land in the interests of the people. Land use planning takes time, partly because modern science needs to be applied. In Ontario's far north, there is a need for much more geological knowledge before optimum land use can be determined. Over this large tract of land, we have the opportunity of exercising modern land use planning based on scientific principles and traditional aboriginal knowledge.

We should not start with prescribed limits that are not based on science and not based on the needs of the people. Indeed, land use planning in the far north should begin with widespread geological mapping and mineral exploration.

Bill 191 would ensure that there will be no exploration or mine development in the far north for the foreseeable future since it will take a great deal of time to develop land use plans. The development of these plans will be greatly hindered by lack of funding, lack of capacity and lack of geoscientific knowledge across this huge territory.

We believe that the Far North Act is unbalanced and does not properly consider the need for economic development that is so important to the people who live in the region and in the rest of the province. Taking more than 50% of the land out of the mineral inventory forever, particularly by choosing that land before serious geological mapping or mineral prospecting has taken place, would dramatically reduce opportunities for locating economic deposits that lead to benefits in terms of jobs and community sustainability.

I would now like to offer a few points about the nature of prospecting and mining.

The Chair (Mr. David Orazietti): Just before you get going, you've got about a minute left on your time. There will be time for questions.

Mr. Jon Baird: Mineral prospecting, if done properly, has little lasting effect on the land. But mining needs large tracts of land because we are looking for needles in haystacks. The far north is a very large haystack. No one knows what is underneath their feet. Those sitting in this room don't know what's below us. We have a great deal to discover, a great deal of wealth, a great number of jobs to create in the north, but we must not take away 50% of that potential by simply preserving, not protecting.

We're for protecting. If 20 mines were found in the far north, that would take one half of 1% of the land mass.

The mining industry is prepared to leave 99% of the land untouched because mineral prospecting, done properly, does not harm the land.

Thank you very much.

The Chair (Mr. David Oraziotti): Thank you for your presentation. We'll start with the Conservative caucus. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much. I'll be sharing my time with Mr. Barrett here.

Thank you for the presentation. There's a picture that I've been getting today from all the people making delegations here, and that is the fear that investment in industry and employment will vacate at even faster levels from the north than what is happening right now under these two proposed pieces of legislation. The people who it's designed to benefit are opposed to it. The industry is opposed to it. Really, the only people we've heard that there was prior consultation with on Bill 191 was one environmental group so far. Were the prospectors and developers made aware of Bill 191 prior to its announcement?

Mr. Jon Baird: No. For me, it was like knowing when Neil Armstrong landed on the moon. I was in Quebec City at the annual meeting of the Assembly of First Nations. The announcement was made on July 14. The next day Minister Bryant came to town and I had the privilege of having a meeting with him. It was a total surprise at that time, I can tell you.

Mr. Randy Hillier: That's the picture that we begin to—I'll have one other question before I turn it over.

We've also heard of this idea that's been coming through that different people will be treated in law differently, especially under the Mining Act. Is it your view that the mining industry is dependent on inequality of the law to be successful, or would you prefer equality of the law in the mining industry?

Mr. Jon Baird: I think any proper citizen prefers equality of the law. Personally, I do not see any inequalities. Anyone can stake a claim; you just need a miner's licence, and that's pretty easy to get.

Mr. Randy Hillier: No, there are some more nuances within the bill, but I'll pass it over to Mr. Barrett.

The Chair (Mr. David Oraziotti): We need to move on; we don't have time for two members in each caucus to be asking questions in five-minute rotation for all parties, so we'll have to go to the NDP. Mr. Bisson, do you have a question?

Mr. Gilles Bisson: Yes. Under your comments on Bill 173, you are saying, "... we believe that the approach taken in this legislation is inconsistent with the guidance that the courts, notably the Supreme Court of Canada, have provided." I wonder if you could expand on that a bit, because I know what you're getting at, but for the committee, explain how it doesn't.

Mr. Jon Baird: Mr. Hardin?

Mr. Michael Hardin: I'll answer that question. You've already heard in some detail today from two commentators on the nuances of the Supreme Court's decision in the three leading cases: Haida, Taku Tlingit

and Mikisew Cree. We adopt those, generally speaking, by reference. The difficulty is that the law, as presently written, does not clearly follow what the Supreme Court has told us: number one, that the duty to consult and to accommodate is the duty of the crown. As Mr. Edmond's presentation pointed out, the act is written in the passive voice, which leaves it open to interpretation. If you have the opportunity to review the October 10, 2008, submission that the PDAC submitted in response to the Mining Act discussion paper, we treated this question in some detail and we implored the government to bring clarity and certainty to the division of labour in the consultation process between that of government, on the one hand, and that of proponents on the other, something which we don't feel any government in Canada has adequately done to the present time.

The Chair (Mr. David Oraziotti): Thank you.

Mr. Gilles Bisson: So this could—

The Chair (Mr. David Oraziotti): Quickly, Mr. Bisson.

Mr. Gilles Bisson: This could be open to litigation if it's passed, then.

Mr. Michael Hardin: There are a number of provisions of the act that are of deep concern to us. One that hasn't been mentioned but that I would like to point to is what would become 86.1 of the Mining Act, from Bill 173, whereby the duty to observe aboriginal rights affirmed by the Constitution is not only imposed upon the crown, but in this case becomes a part of all existing mineral leases as well as all mineral leases issued from this point forward.

The Chair (Mr. David Oraziotti): Thank you. That's time. Mr. Mauro.

Mr. Bill Mauro: Thank you, Mr. Baird and your colleagues, for your presentation. I have a quick question before Mr. Brown as well.

You state in here, "Bill 191 fails to provide First Nations with an appropriate and clearly defined role in the land use planning process." Now, section 16 of the bill states, "The minister shall establish one or more bodies to advise the minister on the development, implementation and co-ordination of land use planning in the far north in accordance with this act." The subsection states that, "When establishing a body ... the minister shall consider what role First Nations should play" in the establishment of that body. You've got some very clear, strong language here. I'd be interested in what you would envision if it were you drafting the bill, what you would have said or how you would prefer to see this, going forward.

Mr. Jon Baird: From the beginning, with Mr. McGuinty's announcement that land use planning was going to be done in a community-based way, I have said to myself, as a non-legal person, "What is a community?" Can you tell me what a community is in this case?

Mr. Bill Mauro: So it's your perception, then, that this language is precluding community land use planning?

Mr. Jon Baird: NAN is saying here, “Yes, we’ve had some meetings with the government, but don’t consult with us, because we have no power. You’ve got to go and talk to the community.” So I’m asking you, what is the community? Who—

The Chair (Mr. David Oraziotti): Thank you. That’s time for questions. Thank you very much for your presentation today.

CITIZENS’ MINING ADVISORY GROUP

The Chair (Mr. David Oraziotti): Our next presentation is the Citizens’ Mining Advisory Group. Good afternoon and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation, five for questions among members of the committee. If you could start by stating your name for the purposes of Hansard, and then you can begin your presentation right away.

1430

Ms. Kay Rogers: Thank you, Mr. Chairman and members of the committee. I’m Kay Rogers. I’m here on behalf of the Citizens’ Mining Advisory Group, often known as CMAG, which represents over 500 citizens in Tay Valley township, in eastern Ontario. In addition, I speak for the Lake Networking Group, which connects over 10,000 property owners on 25 lakes stretching from Kingston to Carleton Place. While each organization has its own *raison d’être*, both organizations share the same views regarding the Mining Act.

I’d like to start by saying that Bill 173 includes some notable improvements. The government’s intent to modernize the Mining Act is welcome.

I would also like to underscore that we are not opposed to mining. There’s no doubt that mining is important to our economy and that we all benefit from the manufactured products created from mineral resources.

I will be brief. My presentation will focus on three issues and provide recommendations to address these issues. I have provided copies of our written submission, which provides more details.

Having just come back from northern Ontario—I don’t know what it was like down here, but certainly up there it was raining a great deal. So here we are, on a summer afternoon—I notice the curtains are closed. I think we’d all try to escape if they were open, to see the sunshine. Just take a moment now and picture yourself where I suspect most of us would rather be: sitting by the water’s edge. You can hear the loons calling. Then you hear another sound. It’s the sound of chainsaws down the lake. No, it’s not a new cottage under construction. It’s a prospector clear-cutting 2.3 acres of land to explore for minerals. You feel the land is being violated. Your soul resides at the lake. You ask yourself, “How could this happen? Where is the Environmental Assessment Act? What about the township’s official plan?” Then you recall the lake association meeting where people talked about tripping over stakes while walking on their own

land. Others talked about finding stakes on crown land, on the north shore of the lake. Then you get involved.

The first issue I’d like to discuss is single ownership of private property. I know that a number of others have raised this as well. The focus here will be on the land south of Lake Nipissing, as this is where we happen to be sitting, the folks whom I’m representing.

As we all know, the crown holds the mineral rights to 1.4% of the land south of Lake Nipissing and the French and Mattawa rivers. This is land that’s privately owned by thousands of individuals who pay municipal taxes on their land. We’re all therefore pleased that the surface-rights-only land that is not currently staked was withdrawn from mining in southern Ontario and that surface-rights-only land with existing mining claims will be withdrawn from staking when the individual claims lapse. However, based on our reading—and I may be wrong here, so I seek assurances—it appears that the minister retains the authority to reopen surface-rights-only land for staking. Further, Bill 173 does nothing to protect surface-rights-only landowners from existing mining claims. The claims on these properties can easily be extended. As a result, these private property owners could be in limbo for an indefinite period of time.

To give you a sense of scale, there are more than 50 active claims on or near lakefront properties in South Frontenac and Tay Valley townships alone. In essence, mining still trumps the property rights of private landowners.

Recommendations: first, to revise Bill 173 to actually reunite mining rights with surface-rights-only land not presently staked in southern Ontario, and reunite the mineral rights with all surface-rights-only land in southern Ontario that has been claimed, when the claims lapse. Alternatively, pass Bill 173 with the withdrawal of surface-rights-only lands in southern Ontario firmly embedded in the bill, and add a section stipulating that the withdrawal of the surface-rights-only land cannot be revoked without meeting predetermined conditions, including written consent of the landowner, environmental assessment, consent of the municipality, and public consultation.

We also recommend that you add a section to Bill 173 to limit the number of years existing claims can be held on surface-rights-only land in southern Ontario that were staked prior to April 30, 2009, prohibit the extension of time to complete or submit work and require the written consent of the landowner prior to exploration. These steps would, in our view, ensure that surface-rights-only landowners have the same rights as other property owners, provide a process for closure for those surface-rights-only landowners whose land has been staked, respect the investment made by landowners and respect Canadian law, which has traditionally recognized the rights of individuals to the peaceful enjoyment of their property.

Second issue: Environmental impact assessment. The purpose of the Mining Act references minimal environmental impact throughout the mining cycle, but

Bill 173 is silent on how this purpose would be fulfilled. In fact, mining is blatantly exempted from the Environmental Assessment Act. This is an astounding right in the 21st century.

To illustrate, a not-for-profit organization wishing to develop a children's camp on a parcel of land is required to have an environmental assessment undertaken before any site alteration can be permitted. In contrast, a prospector wishing to explore for mineral potential is not required to have an environmental assessment before undertaking preliminary exploration work. Indeed, counter to many of our images of a prospector with a little bag and a chisel, preliminary exploration work can include clear-cutting up to 2.3 acres of land, excavation of up to 1,000 metric tonnes of material, surface stripping, drilling, trenching and blasting. Again, mining trumps the Environmental Assessment Act.

The group recommends that Bill 173 be revised to stipulate that the mining sector is subject to the Environmental Assessment Act and require the review of environmental assessments by an independent body as part of the application for a prospecting or exploration permit. These steps would resolve the existing contradiction whereby the Environmental Assessment Act applies to everyone except the mining sector and ensure that mineral exploration and mining would not result in adverse health or environmental impacts.

The third issue: Strengthen local planning. Bill 173 requires that all new staking and mining recognize aboriginal community land use planning processes in the far north. This is a positive step. However, Bill 173 ignores the Planning Act. This is the overarching statutory tool for land use planning in Ontario. The Planning Act requires each municipality to prepare an official plan outlining how lands within its jurisdiction will be used. The plan is developed in consultation with citizens and it is sent to Queen's Park for review. The Ministry of Northern Development and Mines has the authority to require that certain lands be protected for mining. This makes a mockery of land use planning. Mining is not always the best use of the land. In many rural communities south of Lake Nipissing, some combination of agriculture, tourism and forestry are the mainstays of the economy. These sectors play a significant role in the economy of Ontario and the sustainability of rural communities. Again, mining trumps the Planning Act.

Recommendations: Add a section to Bill 173 to remove the authority of the ministry to require that certain lands be protected for mining purposes in southern Ontario and revise Bill 173 to provide for the creation of a criteria-based process whereby lands currently protected for mining purposes could be withdrawn where the economic, environmental, social and heritage interests of a municipality or county would be compromised by mining. These steps would provide for true land use planning; balance the importance of mining, agriculture, forestry and tourism to the economy of Ontario; and ensure more open and transparent governance that respects the different realities in different regions of the province.

1440

In closing, these recommendations are intended to manage the resource wealth of Ontario in a way that balances the rights and interests of all, to protect the ecological systems upon which we all depend and to contribute to the sustainability of rural municipalities throughout the province. In our view, these recommendations would build on the positive changes in Bill 173 and fulfill the objective of truly modernizing the Mining Act.

The Chair (Mr. David Oraziotti): Thank you for your presentation. Mr. Bisson.

Mr. Gilles Bisson: Two quick questions: On the land use planning, you're suggesting that you tie the mining sector to the municipal Planning Act. But in places like the far north, where there are no municipalities, is that doable, in your estimation, or do you really need a separate regime?

Ms. Kay Rogers: I won't speak for areas, Mr. Bisson, that fall under the unorganized communities act. I think that would be inappropriate.

Mr. Gilles Bisson: You're just talking about the geographic in the municipalities.

Ms. Kay Rogers: Yes, where there are municipalities that fall under the Planning Act.

Mr. Gilles Bisson: I get that and I see where you're going. The other thing is—when you write so many notes, it's to get back to the right one. Limit the number of years claims can be held: What would you suggest is the number?

Ms. Kay Rogers: Say, five years.

Mr. Gilles Bisson: Five years? Okay.

Ms. Kay Rogers: I mean, three to seven, but you get the idea. It can't go on and on and on.

Mr. Gilles Bisson: Yes, provided there's exploration, you can hang on to it, but if not, you lose it.

Ms. Kay Rogers: Yes.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. Mr. Brown.

Mr. Michael A. Brown: Welcome. It's good to see you and thank you for your presentation. As you know, all staking, all mineral rights in southern Ontario will be brought back to the crown. I'm having some difficulty with your position. We listened this morning to the Ontario Real Estate Association, who told us they did not think that was the right way to go and that taking the mineral rights back to the crown was the correct way. Their argument, if I could paraphrase it, was simply that if you did that, it would permit private landowners, then, to resell those rights to whomever they chose and we would be right back where we started. Could you help me with that one?

Ms. Kay Rogers: I think it's a double-edged sword, Mr. Brown. On one hand—for example, on my property, I happen to own the mineral rights, so I could talk to our friends, the prospectors, and say, "Hi. I think there's gold in my hills. Come on over and let's take a look and we'll make a deal." There's a downside to that. If it's simply withdrawn, it is to ensure that there's certainty. I think that's the element of concern here.

But I think the other part that's important is that in our view, these three recommendations are almost like three legs on a milking stool. Whether the land that is going to be explored is my personal land or your personal land or whether it's crown land, which, indeed, belongs to all of us—

Mr. Michael A. Brown: The Queen. The Queen owns it.

Ms. Kay Rogers: —to the Queen, on behalf of all of us, if there are appropriate planning processes in place and an appropriate environmental assessment in place, then regardless of whether they're withdrawn or re-unified, we still have these other two legs to ensure that mining is done in an appropriate fashion. Again, we're not opposed to mining; it's rather that it be done properly. I hope that answers your question.

Mr. Michael A. Brown: Thank you.

The Chair (Mr. David Oraziotti): Thanks, that's time for questions. Mr. Hillier.

Mr. Randy Hillier: Thank you very much. It's good for the committee to understand that there is, indeed, mining that happens south, in southern Ontario, as well, and it has different effects and consequences in the southern area than in the north, often.

Just to follow up on a question earlier, just to keep this in mind, where we have conflicts between mineral rights and surface rights in southern Ontario is on those lands where they are subdivided, where they are owned by different entities. Now, 98.6% of the land in southern Ontario is indeed unified, the same owner of mineral and surface rights, and there is not a problem with 98.6% of the people and the land in southern Ontario; the problem is on that 1.4% where the crown owns the mineral rights and somebody else owns the surface rights.

We've seen this suggestion of withdrawing staking from SRO lands is not satisfying the prospectors, it's not satisfying community groups, and it's not satisfying the private landowners. It appears that it is a compromise, a half step, that is not going to fix any problems and actually may create additional problems. In your view, would it be more appropriate to reunify those properties or just to withdraw staking from them? In addition, I understand the other two legs of the stool, and that will bring mining in southern Ontario in line with other uses.

Ms. Kay Rogers: My preference, Mr. Hillier, I think, and that of our group would be to see reunification. That would give equal rights to all of the property owners in southern Ontario. They'd have equal property rights. I find right now the crown is in a conflict-of-interest position: It partly owns the land and partly doesn't. Having two owners to one parcel of land—

Mr. Randy Hillier: Always causes problems.

Ms. Kay Rogers: Yes.

The Chair (Mr. David Oraziotti): Thank you for your time and for your presentation.

ROBERT LAWRENCE

The Chair (Mr. David Oraziotti): Our next presentation is from Mr. Robert Lawrence, an independent

prospector. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. If you could just start by stating your name for Hansard, and you can begin your presentation.

Mr. Robert Lawrence: Mr. Chairman, committee members, thank you for allowing me to be here. My name is Robert Lawrence. Prospecting is a second career for me. I've been doing this for three years now and have claims in the Larder Lake mining district and in the southern Ontario mining district. I have yet to make any money, but I'm working for myself. My aim is to follow the entire process to the point of having a producing mine. In each of the areas where I have claims, I am at the point of making diamond drilling my next step.

Concerning Bill 173, the Mining Amendment Act, these are my views and I am not trying to represent those who have spent a lifetime prospecting or those who work full-time prospecting. I have three areas of concern: aboriginal consultation and exploration permits, map staking and concurrent map and ground staking, and the prescribed prospector's awareness course.

First is the aboriginal consultation and exploration permit; that's subsection 78.2(1). I think all residents of a mining area should benefit from a mining venture through employment, a prosperous community, or perhaps royalties, and no residents should be harmed by it; for example, from pollution or restricted land use. But should I or an exploration company deal directly with First Nations bands when I am already working with MNDM approval? I think not.

In May of this year, I recorded a claim north of Larder Lake. The reply from MNDM included a letter from the Ontario geological survey. This letter advised me that I should start consultation at this point. They gave me some guidelines which aren't government guidelines and gave me a list of possible contacts. The gist of the letter was that after staking, before I do anything else, I should contact the Ottawa Metis, 800 kilometres east of my claims; a band in Amos, Quebec, 200 kilometres east; a band in Kirkland Lake, which is reasonable; and one in Matheson. This is before Bill 173 has become law.

Moving ahead to Bill 173, according to it, to get an exploration permit I will have to consult with First Nations. Who should I contact? Should I contact each of those four people they suggested that I contact in their letter? What will MNDM agree to? How long should these consultations take? If I have investors with \$1 million ready for a drilling program, how long will they wait if this consultation drags on? What happens when, after consultations and agreements with appropriate bands have been made, some members of the band disagree? We've seen how that can lead to a lot of trouble.

I believe that in the actual regulations there must be a specific contact for me, the prospector, or other agency to deal with, and that contact must be in the Ministry of Northern Development and Mines, who in turn will deal with First Nations and keep the approval process in one place.

Another question is about the level of exploration that will make the requirement for an exploration permit. Right now, it's not stated. For example, will I need an exploration permit if I'm going to use a packsack drill on an ATV just to do some shallow drilling down to about 10 metres? I suggest that the final exploration permit should not be required until they're at the point of moving earth, doing roadwork and things like that. Otherwise, in my case, it would probably tie me up completely with consultations.

1450

The next item is the map staking and the concurrent map and ground staking. When the map staking is implemented, at what location will this start? If we start it too close to where the existing claims are, I don't believe they'll mesh, because I've seen out in the field that not everything shows up on a map the way it actually is on the ground. The other problem is, on each of the topographic maps, there's an error of plus or minus 50 metres built in. So how will this work out when you've staked it on a map, but that map position may not in fact be the real position on the ground?

Right now, when we do ground staking, I can stake the claim but I must have it recorded within 30 days. But there's evidence on the ground that this claim has been staked. They don't show how much time will be required to record your map staking. Seeing as how it's essentially done by computer, it should be a matter of hours at the most, but it still leaves an area there where there are going to be problems for establishing who owns a claim, at least for a very short period of time. Under map staking, small companies and individual prospectors will be at a disadvantage. Companies with money will be able to map-stake any amount of land as long as they pay the minimal recording fee of \$40.80 for each 96-hectare claim. In seconds, without getting within 18,000 kilometres of Ontario, a company in Australia working online could claim 96,000 hectares for \$40,800, and they could keep that 96,000 hectares tied up for two years without spending another cent, if they wished. Meanwhile, I could be out in the bush, surrounded by blackflies, trying to ground-stake some land that has already been claimed.

What we have now—the ground staking works. It provides work in areas that need work, and the claim boundaries are obvious. With map staking, they may not be.

The next point is the prescribed prospector's awareness course, which keeps cropping up when you read the regulations. No matter what, no one is going to avoid having that course. If you don't have a prospector's licence, you'll have to take that course before you get it; if you have one, you'll have to take that course. I hope it's going to be a serious course. I hope it's not just a little square we have to tick off and say, "Okay, that's done." I suggest that perhaps some of the topics should be how to do map staking, because I believe that will actually happen; perhaps something on the hierarchy of a First Nations band and what bands exist in mining

divisions; what outstanding land claims could crop up; sensitive areas—are there cemeteries or burial grounds the average prospector wouldn't know about? Without government help, we just have no way of knowing that. The course shouldn't be more than a week and shouldn't be a financial burden for the prospector, and it should be in locations such as the offices of each of the mining divisions, like Tweed or Kirkland Lake.

As far as Bill 191, the Far North Act, I believe that development and mining should be encouraged in areas that need development. That's all I have about that.

I thank you for this opportunity to express my views. I'm thankful for the opportunity to be a prospector in Ontario. I explore, at the government's pleasure, for resources that belong to the province. When prospectors are successful, the benefits are distributed widely.

If there are any questions, I'm happy—

The Chair (Mr. David Orazietti): Thank you for your presentation.

Government caucus is first up. Mr. Brown?

Mr. Michael A. Brown: Thank you for coming, Mr. Lawrence. A second career—wow, what a choice.

Mr. Robert Lawrence: It'll be a short career.

Mr. Michael A. Brown: That's exciting.

You're the first one—well, the first one I've had the opportunity, anyway, of asking about map staking. You should know that map staking already happens in British Columbia and Quebec and Newfoundland and—

Mr. Robert Lawrence: Nova Scotia.

Mr. Michael A. Brown: Yes. So you know. We share some of your concerns here in Ontario, so it won't happen in one grand swoop. We have to learn as we go from this, because we have some of the same concerns you do, that some large corporation or group would make huge amounts of claims, and you take the playing field beyond any kind of reasonable fashion. So we understand that. But one of the advantages of map staking, as you probably know, is that you don't have to intrude on anyone. Particularly in the far north area, where there have been conflicts between prospectors going in to stake, this is a way to do that: secure the land and then go talk to the First Nation or community, whatever it happens to be, that you've secured a way to do that. So I guess that's the reason. Do you have some further comments on that from a private, independent prospector?

Mr. Robert Lawrence: Well, I think the disadvantage of map staking is that it may be a long time before anyone is actually on the ground and takes a look at anything. They can have the claim; it's sitting there on a map, but essentially it's just going to be vacant land that's tied up for anybody who might—

Mr. Michael A. Brown: The regime, though, causes me to do a certain amount of work every year to maintain—

Mr. Robert Lawrence: Yeah, but you could wait two years before you—at least that's the way it is now: Wait two years, then chances are a company, just for \$40,000 or so, could go ahead. It's cheaper than doing the work to reclaim it, unless some other company decides that they

have got the touch to get their computers online and get the coordinates staked at the right time.

The Chair (Mr. David Oraziotti): Thank you very much for your questions. Mr. Bisson.

Mr. Gilles Bisson: Sorry; I had to step out, but I got the gist of it from my friend here.

How do you reconcile the issue of open staking—and I understand the issue; I don't need you to explain it—and the want on the part of First Nations to be consulted before somebody comes on their traditional territory for staking?

Mr. Robert Lawrence: I say the consultation should be done through the Ministry of Northern Development and Mines.

Mr. Gilles Bisson: But what's to prevent—okay, so I'm the prospector. I think there is mineral potential in a particular area that's affected by a First Nation; it's on their territory. I go to the Ministry of Mines. I say, "I'm interested." They go and talk to the First Nations. Then the problem I have is that somebody else is going to find out I'm looking at staking the ground and its potential there. I may very well lose it. Therefore, how do you maintain the need to basically secure the land for the prospector but at the same time be able to give the First Nations comfort in knowing that there's not going to be something that's going to happen without their knowledge and that they have some consent?

Mr. Robert Lawrence: Sorry. Are we talking about an actual First Nations reservation?

Mr. Gilles Bisson: I'm talking about traditional territory.

Mr. Robert Lawrence: Traditional territory.

Mr. Gilles Bisson: That's all of the NAN territory.

Mr. Robert Lawrence: Well, a lot of them will tell you it's all of southern Ontario too. Yes, if you're going to have to declare your hand to them, I guess that's it; there's no way around it.

The Chair (Mr. David Oraziotti): Thank you very much for coming in today, and thank you for your presentation.

COMMUNITY COALITION AGAINST MINING URANIUM

The Chair (Mr. David Oraziotti): The next presentation is the Community Coalition Against Mining Uranium. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. If you could state your name, and you can begin your presentation.

Mr. Wolfe Erlichman: My name is Wolfe Erlichman. The Community Coalition Against Mining Uranium, or CCAMU, welcomes the opportunity to make a presentation to the committee on the Mining Amendment Act and to assist in bringing the Mining Act into the 21st century. We will be making a more detailed written submission to the committee as well.

CCAMU is a grassroots organization based in the Sharbot Lake area. Our community, together with First Nations, municipalities and other groups, calls for a moratorium on uranium exploration and mining in eastern Ontario. We join thousands of individuals who have signed petitions, written letters and communicated with MNDM and elected officials to express our concerns about exploration for uranium and the need for a moratorium. It is the position of CCAMU that the best solution is to establish a moratorium or ban that would prohibit exploration and mining activities for uranium in Ontario in order to protect public health, safety and the environment from the impact of uranium.

1500

Protests against uranium exploration have been vigorous near Sharbot Lake, west of Ottawa. As an example, a grandmother from the Sharbot Lake area went on a hunger strike for 68 days in 2008, requesting that the Ontario government put in place a moratorium on uranium exploration and mining in eastern Ontario. In the summer of 2007, the First Nations and non-native communities of eastern Ontario came together to create a powerful force that has gained much attention worldwide.

In our opinion, the Mining Amendment Act, Bill 173, is lacking in three major areas: It does not address the special concerns, risks and issues around exploration for uranium; it is silent on consultation with non-aboriginal communities; and there are no provisions for environmental assessment.

If exploring and mining for uranium is not banned, then we think that uranium exploration and mining should have special recognition in the Mining Amendment Act and in the regulations. Unlike other minerals, uranium is dangerous due to its radioactive nature and is recognized as such by Ontario and Canada. It is unique in that it is the only mineral that is regulated federally at the mining stage. The earliest of the mining stages can be carried out without regulation, even though they may have significant health impacts, and local communities and municipalities have no input.

Because the impact of uranium mining is more severe than mining for other minerals, there should be some broader consultation and agreement from the affected community if these activities are to take place.

One of the reasons that uranium exploration is being opposed is the belief that it can negatively impact water, air and the environment generally, putting both people and the environment at risk. According to the Ministry of the Environment, "Certain exploration activities carry with them a certain level of risk for environmental impairment if undertaken without appropriate precautions. The drilling of exploratory boreholes may lead to risk to the environment if such boreholes are not properly maintained while in use or properly abandoned when no longer required ... there are no regulations specifically governing the mineral exploration industry."

It is CCAMU's position that local concerns about uranium exploration are justified, given that the current regulatory regime for managing uranium exploration

activities in Ontario is deficient. It provides few tools for monitoring and mitigating impacts of uranium exploration on water resources and the environment. There are no special instructions when drilling for uranium ore, as to what are the most appropriate practices to limit the exposure of water to uranium, particularly when an aquifer is encountered during drilling. There are no instructions for appropriately dealing with uranium waste rock during exploration. There are no requirements to monitor uranium concentrations in drinking water supplies that may be affected by the exploration activities. The instructions for abandoning unwanted material from drilling by piling waste to a height of 1.5 metres and at a distance of 61.5 metres from permanent water bodies are insufficient to limit uranium contamination. The regulations do allow the resident geologist to add conditions on the handling of drilling wastes. Presumably, this provision could be used to address uranium waste. However, the discretionary nature of this provision does not provide any certainty that uranium waste rock will consistently be disposed of in an adequate manner.

Regardless of the percentage of uranium that may be encountered during exploration, Ontario has no standards or guidelines setting restrictions on exploration. Saskatchewan does have such requirements, which include the following:

- A minimum 100 metres must be maintained between the drill site clearing and any water body or watercourse.

- Drilling effluent shall be contained.

- Where possible, all efforts shall be used to prevent drill mud, return water, and cuttings from running uncontrolled from the site or to within 100 metres of a water body or watercourse. Appropriate erosion control measures may need to be implemented.

- Drill mud solids or cuttings with a uranium concentration greater than 0.05% are to be collected and then disposed of down the drill hole and sealed.

- Any drill hole that encounters mineralization with a uranium content greater than 1% over a length longer than one metre, and with a metre-percent concentration larger than five, will be sealed by grouting over the entire length of the mineralization zone and not less than 10 metres above or below each mineralization zone.

CCAMU recommends:

- that there be standards for uranium exploration and restoration of sites;

- that legislation should be passed that relates specifically to uranium exploration which would include environmental impact assessments and restrictions in populated areas and watersheds; permitting, including the initial exploration and drilling phases, backed by clear regulations designed to protect the environment and public health and approved by related ministries; fines and penalties as described in Bill 173 should remain;

- that there be strict environmental rehabilitation requirements related to exploration activities;

- regulations should require that all bore drilling holes be abandoned according to strict standards, as found in Saskatchewan.

In order to take into account the risks associated with uranium, uranium exploration should be treated differently than other minerals. It follows that there needs to be permitting for all mineral exploration on the ground. If uranium is not treated as a special case, all activities that involve ground exploration should require a permit with strict, prescribed conditions and restrictions to cover the risks associated with uranium. The cumulative impact of drilling for uranium and abandoning of drill holes without proper restoration should be addressed by having the proper restoration of historic drill holes be a condition of permitting.

The Mining Amendment Act needs to consider the impacts of uranium exploration on water resources. Like New Brunswick, Ontario should have enhanced regulations to address potential impacts of exploration for uranium on surface water supply watersheds to address public concerns and to help protect drinking water. New Brunswick's regulations limit uranium exploration and staking of claims. Exploration is now banned on municipal land, in towns and cities, in designated watersheds, in fields with private wells and in proximity to dwellings. The new regulations are retroactive and exploration on previous claims in areas that are now banned will not be able to continue. Other initiatives focus on appropriate buffering, compliance and enforcement.

New Brunswick also upgraded drilling requirements and adopted guidelines used by Saskatchewan for uranium exploration to include more specific rules designed to protect the environment and the health of New Brunswickers. Claimholders must comply with regulations that include restrictions outlined in the Clean Water Act and Clean Environment Act before they can start exploratory work. The acts identify and map surface water supply watersheds and outline prohibitions, specifically naming uranium, in order to protect drinking water. The revised conditions include restrictions on mineral exploration in designated watersheds. The New Brunswick Clean Water Act has been amended to protect public water supply systems with sections that prohibit exploration for uranium in designated watersheds.

The New Brunswick legislation provides a model that should be considered from a number of different vantage points, including:

- identifying and protecting watersheds;

- provisions that establish the priority of the Clean Water Act;

- addressing the concerns of the public at the exploration stage;

- adopting Saskatchewan guidelines;

- protecting the existing and future well-being of the residents and communities; and

- restricting exploration for uranium in designated areas.

CCAMU recommends that the precautionary principle be followed, and no person should prospect or explore for uranium in areas identified as a source of drinking water through acts such as the Clean Water Act and the Drinking Source Water Protection Act in areas with

private wells, in municipalities, or within one kilometre of residential or institutional buildings.

In relation to public participation, the existing legal framework falls short in relation to public participation because it provides no avenues for addressing community concerns about uranium exploration activities. Currently, public concerns about the environmental impact of preliminary exploration cannot be heard. Widespread opposition often occurs when there is no provision for public input and participation in the decision-making processes. The bill needs to address this.

CCAMU recommends that the Mining Amendment Act reflect the principle that public participation, including but not limited to aboriginal consultation, is an important element of an open and balanced decision-making process. There should be an obligation to create opportunities for the active and informed participation of the public at every possible stage of the exploration process. At all times, there should be a process to protect and promote the existing and future well-being of all residents, including residents of Ontario outside the exploration area.

Finally, the environmental assessment: There are no provisions within the Mining Amendment Act requiring environmental assessment or environmental impact studies for preliminary exploration activities. If there were such provisions, proposed exploration projects that raise special concerns, which is often the case with uranium exploration, could be addressed in a process that integrates permitting of exploration with environmental assessment.

Within the permitting process, environmental assessments would allow for a determination of whether a project should proceed—and if so, to determine terms and conditions—and recognize the crucial role that such an assessment can play to ensure that all the significant impacts of proposed exploration projects are taken under consideration. Also, it would allow permitting that has minimum environmental impact on water and other environmental resources. A process for permitting should allow transparent terms and conditions for how exploration should take place. CCAMU recommends that until a process is established to assess risk, no person shall prospect or explore for uranium until environmental assessment requirements are in place.

1510

Other considerations: One is that the values of today's world no longer assume that mining and exploration activities are the best use of land and that these activities are compatible with existing land use. There should be consideration for municipal policies as found in local official plans and local zoning bylaws.

The final recommendation is that the next step should include not just the Mining Act legislation but also the provincial policy statement; the relationship with other legislation and policies, including those related to environmental protection; the relationship of mining activities to municipal powers, including municipal official plans; the Environmental Assessment Act; and methods of environmental protection.

Thank you.

The Acting Chair (Mr. Mike Colle): Thank you, Mr. Erlichman. Questions? The PC caucus.

Mr. Toby Barrett: Thank you for that presentation on behalf of the Community Coalition Against Mining Uranium. You indicated that uranium is unique: It's the only mineral that's regulated federally at the mining stage. In your presentation, you talked about there being no community participation other than aboriginal people, apparently.

Mr. Wolfe Erlichman: Well, no. That was a reference to the amendments to the Mining Act where you're going to have community plans up north. There's a lot of talk about involving aboriginal communities in the planning process; whereas in my case, if I'm living beside crown land in southern Ontario, I'm not involved at all if anybody wants to stake that crown land and go ahead. There's no public participation at all.

Mr. Toby Barrett: So the area up in Sharbot and north of 7—I was up there last summer—have there been meetings hosted by either level of government, national or provincial, about the exploration issues?

Mr. Wolfe Erlichman: There was a meeting in Kingston and in Ottawa in relation to amending the Mining Act, but—

Mr. Toby Barrett: Yes, and I attended one in Toronto as well. I just wondered, specifically, about that issue up around Sharbot Lake.

Mr. Wolfe Erlichman: No. There's been none.

Mr. Toby Barrett: I see. And as far as your call for environmental impact assessments, environmental restrictions, environmental rehabilitation, is that not in place now at the federal level just because they regulate uranium mining?

Mr. Wolfe Erlichman: They regulate mining, but I'm talking about the exploration stage. In other words, the point was made by a previous speaker that if a non-profit group wanted to do something in terms of a camp, you'd have to have an environmental assessment, but if somebody came and started exploring and drilling for uranium at the exploration stage, there is no environmental assessment. We're saying there should be one.

Mr. Toby Barrett: That would be neither national or provincial?

Mr. Wolfe Erlichman: The federal government doesn't get involved until there is an actual mine; the exploration stage is totally provincial.

The Acting Chair (Mr. Mike Colle): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just a couple of questions in regard to the planning act: Is it your sense that if uranium mining was under the authority of the municipal official plan, your rights would be protected?

Mr. Wolfe Erlichman: CCAMU's initial position is that there should be a ban on uranium mining; we don't think uranium should be mined. But if that's not the case, then we're suggesting that, like any other kind of mining, it be under local municipal—it would be just like any

other activity done at the local level. It shouldn't supersede the official plan.

Mr. Gilles Bisson: Okay. Your first position is no uranium exploration, banning that, then making it consistent with and having to follow the municipal official plan?

Mr. Wolfe Erlichman: Yes.

Mr. Gilles Bisson: But most municipalities would not be well prepared or have the capacity to deal with the issues around uranium mining, so where does that leave you? That's what I'm trying to figure out here.

Mr. Wolfe Erlichman: Well—

Mr. Gilles Bisson: Some communities, like maybe Elliot Lake, would, because they know something about uranium, but a whole bunch of other communities would have little in the way of capacity. Wouldn't you be better off under some provincial guideline or some provincial regulation or law?

Mr. Wolfe Erlichman: That's what we asked for in terms of amending the Mining Act. We've asked that uranium be treated as a special mineral but the ministry maintains that they're all the same. We said, "Well, if that's how you want to deal with it, then"—and we make the point here. It's lost in here, but the point we make is that there should be special standards for uranium mining, and if you don't want to designate it as a special thing, then apply those across the board for everything.

Mr. Gilles Bisson: I understand your argument in regard to—

The Acting Chair (Mr. Mike Colle): Okay, thank you.

Mr. Gilles Bisson: No, thank you very much, Chair. That was very good. Thank you very much. Next question, please.

The Acting Chair (Mr. Mike Colle): Next question.

Mr. Michael A. Brown: Thank you, Mr. Chair.

Thank you for coming; I appreciate your comments. My question is kind of a practical one, I think, about staking and then exploration following it. If I am a prospector and wish to stake a claim, I don't say I'm going out to stake a claim for gold or bauxite or uranium or whatever you want. I stake a claim, and when I go to prove out that claim, according to the Mining Act as it goes forward, I have to do a certain amount of work on that claim every year. I don't have to tell you or the government or anyone else whether it's uranium or gold or gypsum that I'm looking for; all you have to do is do the work. Are you suggesting, therefore, that there be some kind of requirement that someone exploring on a claim would have to say up front, "I'm doing uranium; that's what it is that I'm exploring for"?

Mr. Wolfe Erlichman: I think that you have situations like in Nova Scotia and New Brunswick where, if you are doing exploration work and you run across—I don't know the exact number—a significant percentage of uranium, then at that point you have to notify the province and certain things come into play.

The other thing that happens is that oftentimes people say, "We are going to explore for uranium." Companies

say that exactly because they evidently know, or maybe there are maps at Queen's Park that say that. There are certain situations where, when you are doing exploratory work, you come across a certain percentage of uranium, and it's at that point, I think, that you have to—

Mr. Michael A. Brown: So there's a trigger. That's how you would see this working?

Mr. Wolfe Erlichman: I think that's how it works in some of the provinces, like New Brunswick and Nova Scotia.

Mr. Michael A. Brown: Because I know for a fact—I represent Elliot Lake and some areas which have high uranium potential, but I also represent the Hemlo goldfields, or I'm right next door to them, and I know that we drove over those fields for a long time before anybody even suspected that right under the Trans-Canada Highway we had a gold mine. It could have just as easily been a uranium mine.

Mr. Wolfe Erlichman: That's right.

The Acting Chair (Mr. Mike Colle): Okay, thank you. Thank you, Mr. Erlichman. We appreciate it.

SAGAMOK ANISHNAWBEK

The Acting Chair (Mr. Mike Colle): Next is Sagamok mining, Chief Paul Eshkakogan and Dean Assinewe, minerals development coordinator. You have 15 minutes for a presentation and then five minutes for questions. So if you could identify yourself when you start speaking and we'll begin. Welcome.

Chief Paul Eshkakogan: *Remarks in Ojibwa.*

My name is Paul Eshkakogan. I'm the elected chief of the Sagamok Anishnawbek and not Sagamok mining. Thank you for a fairly close pronunciation of my last name there, Mr. Chair.

The Acting Chair (Mr. Mike Colle): My first language is Italian, so you'll have to give me some—

Chief Paul Eshkakogan: No problem. I want to begin by thanking the standing committee for the opportunity to speak here today with respect to the Mining Act. I also want to acknowledge the efforts of Minister Gravelle and Minister Duguid for involving the First Nations in these discussions which have been going on for well over a year. I make that statement only from our community's point of view because we've had opportunities to speak to government with respect to the discussions around the Mining Act.

1520

Sagamok was also involved and participated with the Union of Ontario Indians in gathering input and concerns right across the Union of Ontario Indians' territory. I also want to acknowledge our political and territorial organization for the fine work that they've done, along with working with the provincial government.

I'm not sure if our slide show is—

Interjection.

Chief Paul Eshkakogan: We had a slideshow planned, but I think you have it in front of you.

Our community is made up of Ojibwa, Odawa and Pottawatomi nations. We have a population of about 2,400 on and off reserve. On reserve we have about 1,450, so that's kind of rare in Ontario in terms of First Nations communities. We have more than 50% of our population residing in our community.

We have about 120 families on government assistance, social assistance, a caseload of 220; 60% of our adult workforce is unemployed. This is why we need to have meaningful participation in resource development, to address poverty in our community.

Our community, our First Nation government, has ISO 9001 certification, and we've had that for about three years. We're accountable and transparent. We have a way of explaining the ISO: Say what you do, do what you say. You check it and prove that you've done the work and you improve on that. We do that through our own work plans and policies.

We're also signatories to the Robinson-Huron Treaty of 1850. We consider minerals an important part of our way of life and culture. We exercise our treaty rights in our treaty lands and within our traditional territories. One of the things that we've done last year was we had a fall gathering on our traditional territory north of Webbwood. Some of you might be familiar with the West Branch Road. We had a fall gathering there where our community members gathered to hunt, fish and gather.

The Sagamok capacity that we have: We developed a mineral strategy in 2007, and that really allowed our community members to learn about mining and the mining cycle. We've also increased capacity of our council and community, again in the mining cycle. We've undertaken community consultations and discussions in our community. We have a position that's dedicated to this area of resource development and mining, and that gentleman is sitting to my right, Dean Assinewe.

We've also developed Sagamok consultation guidelines. These really spell out how government and industry will consult with our community on a wide range of issues. Mostly it has been about resource development. So we have a process and we apply that process and it works.

I guess overall we've been on this learning curve, and we've done it in the current environment and we've had success.

I also want to talk about some of the engagement that we have with development companies.

Right now, we're in negotiations with Vale Inco with respect to the Totten mine project just west of Sudbury, near Worthington. We're hoping to conclude an impact benefit agreement by this spring.

We've concluded our impact benefit agreement with Ursa Major Minerals. They're a small to medium junior mining company. They have an operation in Shakespeare township in the Agnew Lake area, Espanola area. We'll be signing that IBA, actually, on August 12, so we're very pleased with that.

We're in discussions with Western Areas. That's a miner from Australia. They're exploring in the East Bull

Lake area. We've started some very good relationships with them and we hope they continue. They're in the middle of explorations there right now. We've had our people working there.

We've created partnerships around all of this activity; for example, with Logan Drilling, a fairly large driller from the east coast. We've started a partnership with Becker Engineering from Windsor, Ontario. We also have partnerships with Cementation; T Bell; mySmart-Simulations, a computer trainer design company. We're looking at some hydro and wind power developments.

Our goals: Obviously, we always need to protect our aboriginal and treaty rights. We're also talking about treaty implementation, ensuring environmental stewardship roles and responsibilities. I always describe this one, when we sit down with a mining company, by saying we want something more than just going around and collecting water samples; we want real capacity to train our people, to be involved in the interpretation of data, and to involve our elders in the areas of traditional ecological knowledge. We want to secure employment and training benefits, contracting and supply benefits. We're also seeking some type of financial support from mining companies to enhance our programs and to start to address the poverty situation in our community.

The Sagamok position on mineral resource development: Again, we strive for meaningful consultation and accommodation; prior, free and informed consent; and compensation and forms of accommodation determined jointly by Sagamok and the crown. I think those things are being attained now, again, in this current environment, and we hope to see more positive developments coming from this mining act.

I'm going to turn it over to Dean now to quickly go through some of our comments on the bill itself.

1530

Mr. Dean Assinewe: Thank you, Paul. Again, my name is Dean Assinewe. I'm a professional forester and Sagamok's minerals development coordinator. In my section, I'll talk specifically about Bill 173.

Out of the act, there are about 200 sections, and references to First Nations or the far north—it's a rough estimate—happen about 10 or 15 times. But right at the beginning it specifies that the Mining Act—or our recommendation is that the Mining Act and rights and interests granted pursuant to it must not supersede or adversely impact aboriginal rights. We observe that it is weak in its recognition despite appearances, such as in section 2 and section 46, where it relates to leases subject to aboriginal and treaty rights. The purpose clause of section 2 references the duty to consult but does not mention anything about accommodation, which, again, is recognized in the Supreme Court of Canada court law.

Both provisions will require First Nations to prove assertions of aboriginal and treaty rights, which are only now being defined in law, so there are a lot of areas where First Nations need to establish these things as well. The province is likely to require evidence of aboriginal and treaty rights, imposing the burden of proof on First Nations.

While I go through all this, I want to just raise the awareness or concern of First Nations people that there are capacity issues at the First Nations level—at both human and financial resources, to do this kind of work.

Where it relates to granting of mineral tenures, First Nations should be consulted prior to staking and recording of mineral claims within our traditional territories. Some of the ideas behind that are, what is the mineral potential that is there already and what are the potential impacts of companies coming in? So it is fundamentally flawed to the extent it maintains the free entry system. It does not support the free and informed consent of First Nations to mineral development projects that may detrimentally impact our aboriginal and treaty rights.

Again, it points to the importance of First Nations land use planning, not only in the far north but in the areas of the undertaking where both population and pressure on the resources is quite high. Right now there's a strong belief in those communities at the moment that if the boots hit the ground in the forest or on the land, our aboriginal and treaty rights have the potential to be adversely impacted.

Just to continue, Bill 173 does not provide for consultation or notification by the crown—and we wanted to emphasize that—to First Nations in relation to:

- prospecting activity in First Nation traditional territory;
- staking and recording of mining claims;
- issuance of tenures: licences of occupation, leases or patents;
- approval of exploration plans and permits—well, there is mention of that; and
- annual assessment work requirements and financial payments.

Further to that, it does not provide for consultation or notifications by the crown—again—to First Nations in relation to:

- minister's permission to mine more than the prescribed volumes—

The Acting Chair (Mr. Mike Colle): Excuse me, you have one minute left.

Mr. Dean Assinewe: Okay. I guess to sum it all up, then, we need to provide a lot of emphasis on the need for land use planning in First Nation territories and address the capacity issues at those levels to meaningfully provide input into the decision-making of the crown where it relates to all activities of the mining cycle.

Paul, any last words that you want to add?

Chief Paul Eshkakogan: No, not offhand, I guess. We're really glad to be here.

Mr. Dean Assinewe: You have my presentation in front of you there. I just was hoping more time—

Chief Paul Eshkakogan: And we did submit a position paper back in the winter that speaks to our issues.

The Acting Chair (Mr. Mike Colle): Okay. Thank you very much. A question from the NDP.

Mr. Gilles Bisson: Not so much a question. I'm just going to make a comment; you can chime in after. I

guess part of the problem I'm having with this is that I think most people are onside with the objective. I think we all want to get to the same place. We want to make sure that if there is going to be mining activity, or whatever activities on traditional lands that have happened, and it's in a sustainable way, that First Nations are part of the process, that you have a real say and that there's real revenue-sharing at the end.

I'm listening to this presentation and you can't even get through it in the 15 minutes that you've got. So what do we need to do in regard to making sure that we get this right? Because it's my sense that after five days of hearings, we'll be just as confused as we were at the beginning, and if that's the case, where the heck do we go with this at the end?

Chief Paul Eshkakogan: You can all come to Sagamok if you want, and we can talk to you there.

Mr. Gilles Bisson: I gave you that softball.

Chief Paul Eshkakogan: We've been on a tremendous learning curve, our community. If it wasn't for the leadership, the council, the elders—really, what it has come down to is the community wants to enjoy those employment benefits, too. But at the same time, we have to protect the environment. We think that with our involvement, that can be attained.

The Chair (Mr. David Orazietti): Thank you. Mr. Miller.

Mr. Paul Miller: I just have a quick question, Paul. I guess what you're saying in your presentation is that the language within the bill is not strong enough to spell out the position of the First Nations. That's the main thing that you're complaining about, right?

The second fact, and I have a quick question on this: There was a small prospector in here. You talked about how you're dealing with the larger prospectors; how do you feel that the smaller prospector should have to go? Should he have the government represent him or should he be dealing directly with First Nations? Because he didn't seem to think that that was a good way to go; he'd rather the government did it. How do you feel?

Chief Paul Eshkakogan: We think that there should be involvement by the government, but other communities don't want the government involved because this is a business deal in some of these cases. I think that we've been fortunate to move as far as we can without too much involvement from the government.

I do want to acknowledge that we were funded by the provincial and federal governments, and Vale Inco also funded us to get on that capacity curve. Just to make my answer short, I guess.

Mr. Paul Miller: Just that question on the small prospector, how does he deal? Do you feel that he should deal directly with First Nations or through the government?

Chief Paul Eshkakogan: Definitely. I think they've all got to come in and talk to us and at least let us know where they are so that we can put that on our GIS system and so we know where to get a hold of them and they can let us know what stage they're at. Again, our discussion

with him was, “What are you doing? Is there an opportunity for us to get involved? Do you need any assistance?” We’re open to those things.

Mr. Paul Miller: Thank you.

The Chair (Mr. David Oraziotti): Thank you for your question. Mr. Brown.

Mr. Michael A. Brown: Thank you, Chief. Dean, it’s good to see you. Thanks for making the trek today from Sagamok down here. I’m glad you raised the issue of providing some funds for capacity building on First Nations, not just yours, but others. I suspect we will need to provide more as we go through this process.

I want you to tell me a little bit more about your announcement for next Wednesday. You have a partnership or an agreement with Vale Inco about—is it Vale Inco?—with the Ursa Major Minerals company that you’re going to announce on Wednesday. Could you give us a little idea of what benefit that would be to the First Nation?

Chief Paul Eshkakogan: The company is listed on the TSX; it’s a small to medium junior mining company. They have an open-pit operation in the Shakespeare township just north of Agnew Lake, within our traditional territory. We’re having a signing ceremony on August 12. It’s very important for our community. It concludes approximately three-plus years of negotiations.

We’re going to play a meaningful role in the environmental management regime that they have. We’re going to have contract and supply services opportunities in the area of hauling the ore—into Sudbury is what the plan is right now. That’s one of the opportunities. We’re going to have a percentage of employment on-site and also some financial support for our community as the mine progresses. We’re hoping that the mine goes back into production. They did take out about 100,000 tonnes of what they call a bulk sample. We’ve supported their closure plan. We’re ready to go. Nickel was at \$9 a pound yesterday. That’s a good spike. I hope it stays sort of in that neighbourhood, and things will be good, I think.

1540

The Chair (Mr. David Oraziotti): Thank you for your question.

Mr. Michael A. Brown: I just want to thank the First Nation for the work you do, and also the positive impact well beyond your borders on the general economy of the north shore.

Chief Paul Eshkakogan: It’s going to be huge for the north shore economy, especially with forestry. You heard Dean saying he was a forestry tech—sorry, registered professional forester moved over to mining.

The Chair (Mr. David Oraziotti): Thank you. Mr. Hillier, questions.

Mr. Randy Hillier: Thank you very much for being here today. You mentioned in your comments and also in the presentation that under the current environment you’ve been very successful, and you’ve mentioned a few of these impact benefits with Vale and memorandums of understanding—very positive, good to see. Do

you see Bill 173 as a piece of legislation that is going to improve and streamline that relationship for success or do you see that there are opportunities for greater bureaucratic obstacles or red tape, in your view? What do we need for First Nations to be economically successful and to prosper?

Chief Paul Eshkakogan: Well, we certainly don’t want to take a step backwards or two steps backwards. We have yet to really take a very close look at the legislation itself, but our thinking is that we’ll find ways to work with industry to get to the same points we want to be at. We’re certainly hoping that the right messages are sent to industry also, that there are communities there that are willing to sit down and talk about resource development. To be frank and honest with you, we are having difficulty in the area of financial benefits. That was a tough area. I want to also acknowledge the Kitchenuhmaykoosib Inninuwug people and their chief and council for taking the steps they did because that was a catalyst, I think, for good discussions to happen.

The Chair (Mr. David Oraziotti): Thank you. That’s time for your presentation. We appreciate your coming in today.

Chief Paul Eshkakogan: Meegwetch.

MININGWATCH CANADA

The Chair (Mr. David Oraziotti): The next presentation: Mining Watch Canada. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five minutes for questions among the members of the committee. You can just state your name and begin when you like.

Mr. Ramsey Hart: Thank you very much. My name is Ramsey Hart and I work for MiningWatch Canada. It’s a long day, isn’t it? I’m going to try to keep my comments fairly brief and not go over things that people have already said, because I know we’re all getting a little saturated.

Mr. Gilles Bisson: Not at all.

Mr. Ramsey Hart: Not at all. You want more, right?

Mining Watch Canada, very briefly, is a national non-profit organization. We work on mining issues within Canada and internationally. Our aim is to protect communities, wildlife and the environment from irresponsible mining practices. Our members include labour organizations, social justice groups, environmental and faith-based organizations.

We’ve had reform of the Ontario Mining Act as one of our core projects for a number of years. In the current process, we participated in the consultations here in Toronto—we’ve submitted a number of briefs—and I anticipate submitting perhaps one more brief to the committee that outlines some very specific recommendations that I didn’t want to bog you down with in my presentation today.

I was struggling with how to get across my 20 pages of comments on Bill 173 to you in 15 minutes of an oral presentation. A friend of mine said, “Well, what are your

three take-homes?” I struggled with that for awhile and then I realized that I could summarize most of our recommendations with three—dare I call them—motherhood-kind of statements. These are things we’ve all heard lots of times in other contexts, and they are: First and foremost, “An ounce of prevention is worth a pound of cure”; second, “Please clean up after yourself”; and third, “If it’s hot, don’t touch it.”

Before I go into the details of what I mean by those three statements, I very briefly just want to give you MiningWatch’s take on the mining industry.

We certainly recognize the important role it plays in the economy of Ontario, but we do feel that perhaps the weight of the economic input is somewhat overstated at times and that it is perhaps out of balance with the privileges that it gains. We recognize that it employs people with high-wage jobs, but that is often unstable employment.

Our current mining projects are not the Sudburys, the Timminses, the Kirkland Lakes of today. Future mines are typically having lives of 15 to 30 years, which brings challenges for community sustainability and lasting benefits. We’re talking about 22,000-odd jobs in Ontario. These are Ontario Mining Association figures. Compare that with the non-profit sector, where there are 373,000 people employed by the non-profit sector in Ontario. And 1.8% of GDP—I’m going to skip over that.

The benefits that the mining industry obtains include a litany of tax advantages like flow-through shares, a 10-year tax holiday for remote mines, Canadian exploration tax credits etc. We’re still going to be waiting another three years until we have an environmental assessment framework for mining. It’s recognized as the highest-priority land use in Ontario. And the industry has enjoyed relatively easy access to land, including crown land and traditional territories, for a non-renewable resource.

Our basic conclusion, after summing all that up, is that the framework in which the industry operates is currently out of balance. We share that conclusion with the government, and the need for balance is clearly articulated in the documents leading up to where we are today.

How do we achieve balance? We think that by following those three nice motherhood recommendations, we could go a long way.

In terms of prevention, our belief is that preventing problematic mining projects from going down the line in the mining sequence, identifying them upfront and either mitigating the issues or simply saying, “This is not an appropriate project,” as early as possible is to the benefit of everyone. It has the potential to reduce conflict and it has the potential to actually increase the predictability that the mining sector so often asks for.

How do we do that? Land use planning—we’ve heard a lot about that already today; consultation, including the free, prior and informed consent of aboriginal communities; as we’ve heard a lot of today as well, agreement with municipalities in southern areas, where municipalities are decision-makers, and perhaps also conservation authorities that have a stake in water man-

agement. We need to respect other land users and land uses and include provisions for environmental impact assessment.

Cleaning up after oneself: It’s our belief that industry should cover the full costs and liabilities for fully rehabilitating their projects, including exploration work. This can be done by requiring cleanup of exploration sites, which is not currently done unless you’re going to advanced exploration, and removing the option of self-assurance. Self-assurance is currently the most common way that companies are held accountable, which basically means that if they have a good enough credit rating, they don’t have to provide hard currency in terms of security. As well, the Environmental Commissioner of Ontario is on record as saying that’s a very problematic option.

We’d like to see greater transparency and independent review. That could be by the MNDM. It used to do fairly rigorous reviews of financial issues around closure, and no longer has the resources to do it.

We also think the industry should pay for the monitoring and enforcement of its activities, and that adequate fees and taxes need to be levied in order to ensure that.

Just a few pictures of some preliminary exploration work, in case you’ve never seen it on the land. These are mostly from southern Ontario and one from the north.

Mr. Gilles Bisson: The one with snow, is that from the north?

Mr. Ramsey Hart: No, this is southern Ontario. This is Tay Valley. It snows down south too.

This is the one up north of the Superior shore. Again, these are all preliminary exploration activities.

This is a uranium exploration site near Bancroft, as is this.

Interjection.

1550

Mr. Ramsey Hart: Haliburton.

Our last statement: Don’t touch it if it’s hot. MiningWatch has been on record since 2007 requesting a moratorium on additional uranium mines in Canada. We also see that, if uranium exploration is to continue, there should be special considerations. I feel that has been fairly well addressed by other speakers, so I’m not going to belabour the point. But if you’d like to ask me questions about it, I’d be happy to address them.

So how does Bill 173 stack up here? At a sort of over-macro view, we’re pleased to see the recognition of aboriginal rights and land use planning in the far north, though there are concerns about the details of that which we and others have expressed. We are very pleased to see exploration permits introduced. The fees and taxes and increases in penalties are all very important steps, and we’re pleased to see some of the opportunities for land withdrawals, including the withdrawal of surface-rights-only land in the south.

From this sort of large overview perspective, we also have some concerns—the degree of ministerial discretion that is within the act. Areas that have been withdrawn by the minister—if they happen to be staked by a pros-

pector, the prospector can go back to the minister and say, "Well, jeez, I staked lands that are open. Is that okay? Can I still do that?" According to the act, the minister can say, "Sure, yes. That's fine." That seems a little disingenuous, I suppose, so we'd like to see things tightened up in that regard.

I share the prospector association's concerns about the lack of detail in the amount of items that are being left to full development in regulations. And completely lacking from the act is anything to address uranium, environmental assessment or improvements to mine-closure practices.

So is there an ounce of prevention in Bill 173? We're quite concerned that free, prior and informed consent has not been recognized within the act; that we only have land use planning for the far north; and that municipalities and other watershed planning and conservation organizations are not to be consulted in the south.

One little interesting tidbit that I noticed was that dead people seem to have more protection than many living people. Cemeteries will be accorded a 45-metre buffer zone around them, but if you have a private property, protection only goes to your property line.

How about cleaning up after themselves? Bill 173 does make an important provision for the possibility of exploration sites to be cleaned up, but it's left to the very end, and it's up to ministerial discretion to create regulations to do that. We think that's a crucial improvement that needs to be right in the act, as part of the act, and not left to the potential development of regulations.

Nothing has changed about self-assurance. In this day and age, do we still really believe that the large mining companies are too big to fail? Our grave concern, and we think we share this concern with both industry and those of you in the room today, is that we will never again have another Kam Kotia. Kam Kotia is a mine near Timmins which was abandoned. To date, we, the taxpayers, have spent \$52 million and counting to rehabilitate it.

Mr. Gilles Bisson: They've done a pretty good job, actually.

Mr. Ramsey Hart: It's getting there. This is a recent photo, so it's not yet completed.

I'd like to thank you for this opportunity. We plan very much to continue to be engaged in this process as it goes through, including the development of regulations. We'd be more than happy to be involved in the conversation and look forward to your questions.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. The government caucus is first. Mr. Colle, any questions for the presenters?

Mr. Mike Colle: Yes. My first comment is, your approach was very refreshing and clear and concise and very understandable in a very complex area, so I do appreciate that a great deal.

In terms of the ounce of prevention, what strong measures are lacking in the bill that would reinforce this need for prevention? What do you think should be in the bill to inoculate it against the type of thing that might happen?

Mr. Ramsey Hart: If we look at one of the very controversial cases in southern Ontario that I believe has helped push this forward, which is the uranium exploration in Sharbot Lake area, it was one individual prospector with a private mining company going after a low-grade uranium deposit that caused a large number of people a tremendous amount of grief and, I don't think it's exaggerating to say, trauma. The ability of one individual with somebody else's money to wreak that kind of havoc needs to end, and we end it by ensuring that local municipalities are engaged in this. Municipalities in that area, over 20 of them have signed statements saying they're not interested in uranium mining. Give some authority to local municipalities to be engaged in the discussion and have a meaningful consultation with aboriginals as well as other communities interested in the area.

The Chair (Mr. David Oraziotti): Thank you for your question. Mr. Hillier.

Mr. Randy Hillier: You mentioned Sharbot Lake. It's a good example, of course, and it's one that I'm familiar with, but there's not much in this bill that will prevent another Sharbot Lake from happening in southern Ontario, is there?

Mr. Ramsey Hart: No.

Mr. Randy Hillier: No. Of course, there were a lot of assurances that that's what this Mining Act, not exclusively by any means—but amending the Mining Act was to start preventing conflicts. That was a key objective and goal. But we can see that with all this effort, with all these pages and sections and subsections, we're not going to prevent conflicts, again, especially in southern Ontario, with this present bill. Thank you.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. Questions? Mr. Miller.

Mr. Paul Miller: You mentioned the involvement of municipalities in some of these decisions. It's my experience in the past that—taking landfills for example, we had one in our particular area that was governed by the ministry. The municipality had part of the EA process; they were involved and they set up a liaison committee in the community to deal with the problems that were associated with the landfill. Unfortunately, over the years, a lot of times the ministry didn't enforce their own rules. The companies, in a lot of cases, got away with things; for example, eliminating the citizens' liaison committee and forming their own puppet committee that they put into place. A lot of this happened. Do you feel that they should strengthen the bill to improve the EA process, if you're going to involve municipalities, so that there's more teeth in it? They don't really back it up in a lot of cases. The lack of inspectors and, in a lot of cases, the lack of involvement of the ministry in the actual process has happened in more than one location in this province, and that's a concern for me.

Mr. Ramsey Hart: Likewise, it's a huge concern for us. We see involving municipalities as one piece of the puzzle. The other pieces of the puzzle are: a very clear and rigorous environmental assessment framework that's

matched to the degree of potential impact—we're not talking about having full EAs for the prospector earlier mentioned, going out on his ATV with a backpack drill—appropriate degrees of environmental assessment, as well as rigorous monitoring and enforcement, which is very much lacking especially at the exploration stage. That's not something that really enters into the bill; that's more about budgetary and policy issues. If we can get some more teeth into the bill in terms of monitoring and enforcement, that would be great. I'd be happy to back that up.

Mr. Paul Miller: It's crucial, from community's perspective, to any type of involvement with the ministry that the ministry actually enforces the rules that they've created.

Mr. Ramsey Hart: Absolutely.

Mr. Paul Miller: I'm afraid it's been lacking tremendously in this province.

The Chair (Mr. David Oraziotti): Thanks very much for your presentation today. Thank you for coming in.

ONTARIO NATURE

The Chair (Mr. David Oraziotti): Our next presentation is Ontario Nature. Good afternoon, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions. If you could state your name for the purposes of Hansard, and you can begin when you're ready.

Ms. Caroline Schultz: Thank you very much. My name is Caroline Schultz; I'm the executive director of Ontario Nature. I'm very happy to have this opportunity to present to the committee today.

I'm presenting on Bill 191, the Far North Act. By way of introduction, I'd like to tell you a little bit about our organization. Ontario Nature was founded in 1931. We represent and work with 140 member groups from across the province and 30,000 individual Ontarians. Our mission is to protect Ontario's wild species and wild spaces through conservation, education and public engagement.

1600

Ontario Nature's vision for the province's boreal region is the conservation of the full range of natural and cultural features and values through a system of large, interconnected conservation lands that are free from industrial development. These lands need to be co-managed by First Nations and allow for traditional aboriginal uses and provide non-industrial economic opportunities for First Nations communities. For many years, we've worked with partners in conservation, industry, government and First Nations communities to make progress in realizing this vision and to conserve Ontario's biodiversity through the establishment of protected areas; the promotion of sustainable forestry; the protection of endangered species; and research, education and outreach. In 2003, we established our boreal conservation office in Thunder Bay, which is now a northern hub for

networking and conservation planning. Our staff in Thunder Bay are currently working on a number of specific issues and projects, including research on the potential for regeneration of caribou habitat and land use planning.

I'd like to now give you some specifics on our position on Bill 191, the Far North Act. First of all, some key messages: Ontario Nature strongly supports the far north initiative, as originally announced by Premier McGuinty on July 14, 2008. We also fully subscribe to the recommendations set out in the far north advisory council's submission to the Minister of Natural Resources. I was a member of that council, and we were very pleased with the advice we collectively gave to Minister Cansfield. We also firmly believe that legislation is required to effectively achieve the vision and goals announced by the Premier. The right legislation should provide the clarity and certainty that First Nations, the conservation community and industry all seek. The changes we seek will ensure that the ecological integrity of the region is maintained and that First Nations are rightfully leading in the development of land use plans and the design and management of conservation lands in their traditional territories.

To this end, we believe that Bill 191 requires some major amendments to ensure the following:

First, Bill 191 needs to mandate the creation of an independent regional planning body that has decision-making authority, to be responsible for the far north planning process and to ensure that land use planning is consistent with the objectives and strategy outlined in the act. This planning body should advise the minister on the implementation of the act and must have equal representation from provincial government and First Nations governments to enable, coordinate, finalize and recommend approval of community-level land use plans to cabinet. In particular, the regional body should be responsible for the region-wide land use planning strategy and be enabled to allocate funding for land use planning activities, provide advice to First Nations communities and approve terms of reference drafted by communities. The body should also provide the mechanism for dispute resolution.

The second major amendment is that there needs to be funding committed to ensure that this significant work goes ahead. To ensure the success of the initiative, funding is absolutely paramount. It must be made available to support the First Nations communities that are ready to start their land use plans. There are First Nations communities that want to start their planning process immediately, but the act doesn't allow for any new funds for them to move forward with consultation, conservation or economic planning. The initiative won't move forward unless specific funds are allocated.

The next key issue is the establishment of a science advisory body. Ontario's northern boreal region is large, unique and complex. We strongly recommend that the minister establish a science advisory body to provide advice on the far north land use strategy and to help

communities and regional land use bodies in their work. The science advisory body could provide advice in numerous areas, including where there are gaps in research and knowledge that need to be filled and reviewing the draft far north land use strategy.

The next point, and our last major point, is that land use planning should result in a permanent system of conservation lands. Ontario Nature supports Bill 191's provisions to protect at least 225,000 square kilometres of the far north, but First Nations must lead in the identification of these areas and share in the management of these areas. To sustain Ontario's intact, naturally functioning far north ecosystems, a new approach to planning and development is needed. This approach needs to follow conservation planning principles and identify all values on the landscape—ecological, social and economic—and then determine which high biodiversity areas need to be permanently set aside from industrial development and which areas can sustain industrial development over the long term. Industrial activities need to follow the best practices and work to continuously improve resource sustainability.

We should use leading-edge conservation science and traditional aboriginal knowledge to do better than the usual piecemeal development that has fragmented much of the southern boreal forest. By ensuring that key habitat areas remain connected, we can avoid the isolation and vulnerability that species in small and isolated protected areas often face, helping to sustain healthy populations of all wildlife, including species at risk. Done properly, we will be able to protect the region's vast carbon storehouses while providing important refuges for wildlife whose habitat is being altered due to climate change.

These conservation lands will be important for conserving and restoring species and ecosystems across our northern landscape. Consideration of hydro and wind power development in conservation lands should only occur where those projects are designed to meet First Nations community power needs. These areas should also provide economic opportunities for ecologically sustainable non-industrial economic development for First Nations.

Bill 191 includes a provision that cabinet can override prohibitions on industrial development. This provision must be removed, as it opens the door to abuse whenever mineral, oil or gas potential or any other natural resource potential is discovered in the far north.

Finally, I'd like to conclude by saying that we do wish to express our deep regret that the dates for the standing committee hearings conflict with the NAN general election and that none of the hearings are scheduled to take place in communities whose futures hinge on the success or failure of this initiative. Many of Ontario Nature's main concerns are reflected in the letter from Grand Chief Stan Beardy of the Nishnawbe Aski Nation that was sent to the Premier on July 16. The four main concerns were around First Nations leadership on planning, First Nations leadership on protection, an independent board, and funding. We want to highlight that

the consensus report of the far north advisory council, which was made up of members from all the major industry associations with interests in the far north and environmental organizations, recommended that each of these points be addressed. Ontario Nature wants to send a strong message that Bill 191 must be amended to address these concerns.

Thank you very much and I look forward to your questions.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. Questions, Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I'm looking at this, and I see some contradictions in your presentation. You state here that Ontario Nature is working in partnership with First Nations and industry groups and a host of others and that you fully support Bill 191. We have seen every industry group here today and I believe just about every First Nations group strongly opposing Bill 191. Where the contradiction comes in, it looks like, is in your second paragraph. You believe that it's important to allow our First Nations communities to have non-industrial economic opportunities. That's really tying their hands. When you say they should be allowed non-industrial economic opportunities, if you're saying that resource-based economic opportunities such as mining, forestry, pulp and paper—should that be banned and not allowed in the north?

Ms. Caroline Schultz: No, that's not what my submission, written or verbal, said. First of all, as far as Bill 191 stands, just to correct that, we are not strongly supporting the bill. We think the bill has some very serious flaws and needs some major amendments, which I outlined.

As far as the non-industrial uses, we're talking about the conservation lands that are identified. We want to ensure that First Nations are leading in the co-management of those lands and that there are full opportunities for First Nations—

Mr. Randy Hillier: For industrial—

Ms. Caroline Schultz: For non-industrial, ecologically sustainable activities. Otherwise, they're not conservation lands if those other activities are permitted.

Mr. Randy Hillier: That's been some of the discussion today, how people were informed of that 50% protected area without any discussion ahead of time. I find it very difficult to understand. We see the First Nations communities suffering significant hardship, poverty, and then bringing out a bill called economic development, where the proponents of it are looking to tie their hands behind their back and prevent them from having economic development.

1610

Ms. Caroline Schultz: I don't think that that's what we're advocating in terms of what needs to be in the bill. I think First Nations have a number of objectives, based on our conversations, some of which relate to conservation and some of which relate to economic development primarily associated with natural resources. So our message is that First Nations need to be leading in this

whole process to identify what lands should be set aside as conservation lands and which lands are suitable for industrial development.

The Chair (Mr. David Oraziotti): Thank you very much for your question. Mr. Brown?

Mr. Michael A. Brown: Thank you for coming today. The first thing I'd just like to clarify is that the government did not choose the hearing dates; they were chosen by a subcommittee and by the House leaders. Unfortunately, there is a conflict, and we understand that, but the choice was one made by all three parties.

Ms. Caroline Schultz: It's still disappointing.

Mr. Michael A. Brown: I understand that. We will be in Chapleau actually on the very day of the election. I proudly represent Chapleau.

The other thing is, this is a very unusual process. The government has chosen in this particular instance to take this bill out after first reading. It is normal practice, then, after second reading, to have further consultations, and in all likelihood that will happen. The government will be recommending to the committee that we do that. So this is a work in progress. The government understands that this is a complex issue and that we have a number of objectives we have to reach, including accommodation with First Nations folks to see that their interests are protected and enhanced in this consultation. I don't want to leave the impression that somehow the government is trying to push this through and not go to the northern communities, because that's not the way it's going to be.

We appreciate your group and your own participation in the process and we look forward to improving the bill as we go forward. Thank you. If you have any questions for us, we'll be around.

Ms. Caroline Schultz: Okay. Thank you.

The Chair (Mr. David Oraziotti): Thank you very much for coming in today. We appreciate your presentation.

FIGHT UNWANTED MINING AND EXPLORATION

The Chair (Mr. David Oraziotti): The next presentation: Fight Uranium Mining and Exploration. Good afternoon, gentlemen. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Please state your name for the purposes of our recording Hansard. You can begin when you're ready.

Mr. Robin Simpson: Thank you for allowing us to speak today. My name is Robin Simpson. I'm co-founder of FUME, which was Fight Uranium Mining and Exploration. We recently changed the name to Fight Unwanted Mining and Exploration.

We represent many thousands of constituents who live and cottage in Haliburton. We have the support of every township in Haliburton as well as county support. We represent all of the townships. We have the support of our new MPP, Rick Johnson. We've also submitted a seven-page brief to the committee here. I really do hope

that you can find time to read our submission. It really outlines our position on mining not only in Haliburton, but also in southern Ontario in general.

Gentlemen and ladies, the ministry of mines called their revision document Modernizing Ontario's Mining Act—Finding a Balance. If this was the ministry's goal, they have surely failed. The revised act is neither balanced nor modernized, and I think you've seen that all day long today. The groups that are represented here pretty much across the board are not happy with the revisions that have been made. The Mining Act really needs to be dismantled and rewritten from scratch, in my opinion and in many other people's opinions. There's a real need—a real need—for an oversight committee made up of people who do not serve the ministry of mines and do not serve the mining industry.

I ask you: With water being the most valuable substance on earth at this point in time, how could anyone support this section of the Mining Act? This was covered earlier today; however, I think it's important to again bring it up.

I direct you to section 175, starting with subsection (1): "Where required for or in connection with the proper working of a mine, mill for treating ore or quarry, the owner ... may ... obtain and have vested in him, her or it by order of the commissioner...." the right to drain lakes, divert rivers, dump sludge on other people's property, and in the case of our area, dump potentially radioactive tailings into rivers and lakes.

It is absolutely outrageous that one industry—people like ourselves have to go through hoops and backflips to get a permit for a septic system, and these mining people can come in and potentially contaminate our waterways. In the case of Haliburton, the area that is being explored currently, or up until recently, is on the banks of the Irondale River. The Irondale River is the headwaters of the Trent waterway system. Again, try to build a septic system within a mile of the Trent waterway system and you run into nothing but red tape from the government, yet mining can basically pollute the river, which will flow into the Trent waterway system.

This is not balanced; this is excess beyond belief. In fact, it is the tip of the iceberg when it comes to excess in the Mining Act. I ask you to read every line of the Mining Act, and after reading it you can come to no other conclusion than this is not balanced. In fact, it's tipped in favour of the Mining Act and mining in general. It tramples on citizens' rights and it tramples on our rights to peaceful enjoyment of our land, the right to clean water and the right to protect ourselves against proven negative health issues that can result from mining.

My land, along with six of our neighbours, is staked for uranium exploration, along with about 7,000 acres of crown land surrounding us. We did a water study prior to Bancroft Uranium drilling on the site directly adjacent to our properties. We tested all the wells nearest to the mine and then we tested them after they drilled. The mining company told us that they would drill 15 holes 150 feet deep, which is well into our aquifer. They drilled, in fact,

50 holes through a total of 20,000 feet. That was an average of 400 feet per hole.

After they finished that, we did another water test. My well went from seven micrograms per litre to 18 micrograms per litre, and 20 is the danger point that was—

Mr. Michael A. Brown: Of what?

Mr. Robin Simpson: Of uranium. We took our MPP, Rick Johnson, onto the exploration site this past spring and, quite frankly, he was astounded at the devastation of what was a beautiful piece of our homeland. What he saw were trees bulldozed into rotting piles, deep trenching where samples were cut from bedrock, drill holes everywhere, residue from the drilling, which is illegal to leave.

This particular piece of property is a known area for our three species at risk, as well as a golden eagle family. The Ministry of Natural Resources, when we discussed that with them, said, “Yes, we’ll point them out to the mining company and we’ll make sure they stay out of their way.”

This particular exploration company is now defunct. It has a new company name, and they have left us with an awful mess that they didn’t bother cleaning up. The site was not inspected. It was drilled over a year ago. It was inspected last week finally because of our pressure on the ministry to do so.

We were involved in the meetings during the Mining Act revisions. Our members sat at virtually every table in Kingston and Toronto, and a couple of guys went up to Timmins as well. What we heard at that table from every single mining executive that we sat with—the big guys, not the little guys—was, “We are not interested in mining in southern Ontario.” There is no security of investment because the area is too populated. Groups like ours form and we cause them all kinds of problems, and quite frankly, we intend to cause them as many problems as we can, as we go along.

1620

I’m going to stop now and let my partner, Roger Young, carry on.

Mr. Roger Young: I’m Roger Young. I’m a full-time resident of Haliburton. Thank you for giving us the time of day. I know it has been a long day for you. I have some familiarity with the process. Thirty-five years ago, I was elected as a federal MP. I’ve sat through many committee hearings, and I know that it’s tough slogging and you’ve got to balance a whole lot of interests. Five years before that, I spent two years as an executive assistant to the federal Minister of Energy, Mines and Resources, so I have a little familiarity with mining issues as well. I’m familiar with the nuclear industry. I worked with Eldorado Nuclear, Atomic Energy of Canada, and I’ve been in the mines: gold mines, uranium mines.

I’m here as the president of a small lake association in Haliburton. We have 100 members on our lake. The lake next door, Big Glamour, has 250 members, and Stormy, to our west, has another 150. There are 500 cottage

owners, waterfront property owners, that I know I can speak for immediately.

I also sit on an advisory board of a coalition of lake associations in Haliburton county. There are about 66 different lake associations in that coalition. On the advisory board, I speak from month to month with representatives of those lakes. That coalition represents 40,000 waterfront property owners. If you take that 40,000—let’s just talk some numbers for a minute, in terms of economics—at an average resale value of \$350,000 per cottage, that’s \$14 billion of investment in waterfront property in Haliburton county alone. Multiply that by the investment in waterfront property in Muskoka, Bruce, Frontenac, Lanark, Grenville, and if you take the whole stretch of cottage country from Lake Huron to the Ottawa River, you have billions and billions of dollars of investment.

I don’t think there are more than a couple of cents’ worth of the mining industry in that area. But there was great conflict in my area two years ago, when some gentlemen appeared suddenly, out of the blue, and said, “Hey, folks, we’re miners. We’re great guys. We’re going to give you a 3,500-acre open-pit mine sitting right next to your cottages, and we’re going to give you 40 jobs, and we’re going to make a donation to your library fund.” Well, they screwed up our forest. You saw a couple of pictures of it about 20 minutes ago in Ramsey’s presentation. That was destruction to a crown forest in Haliburton. Robin has just spoken about it.

These are the human problems that are involved when it comes to dealing with the Mining Act and when it comes to doing revisions to the Mining Act. You are here, as representatives of the people, to deal with this legislation and try to make it better. The government proposes; the Legislature disposes. That’s the secret to our political system.

I want to speak particularly to the 97 members who represent southern Ontario. I don’t pretend to tell people in the north what they should do. I’m not an expert on that. But I can tell you some of the problems that we have in the south.

Our great economic engine is the recreational, tourist community: the cottage community. Those people who own those waterfront properties contribute 80% of the municipal tax revenues in my municipality of Highlands East. If you move an open-pit mine into that area, you scare the hell out of the cottagers. Land values go down. If the land values go down, the assessments are going to go down. If the assessments go down, the municipal budgets have to go down, and you leave the local councillors with one of two choices: They either curtail the services, or they raise the mill rates.

I’m not being a NIMBY here, because the people who get hurt the most are not the waterfront property owners; it’s the locals who don’t even own a piece of waterfront property; it’s the locals in the villages and the backlots. If you increase the mill rate, it’s their taxes that go up. The waterfront property owners are only going to come back to where they used to be before their values decreased.

If you curtail services, you don't hurt the cottagers. We only get about 15% of the services to begin with. Cottage kids go to school down here. That's 50% of your tax budget. We don't get garbage pickup. Toronto doesn't get it either, sometimes. We don't get roads, because we live on private roads. We don't get plowing. We don't get a whole lot of the services.

Those are just some of the issues. When you start moving mines in, it impacts upon the tourist recreational cottage industry that provides all that money. Those people spend millions and millions of dollars in our stores and restaurants, lumberyards, grocery stores. They contribute to the tax coffers.

The Chair (Mr. David Oraziotti): Just to let you know, you've got about a minute.

Mr. Roger Young: I'm going to sum up very quickly.

The Chair (Mr. David Oraziotti): No problem.

Mr. Roger Young: How do we deal with this? As you've heard others say today, we need better local municipal control over where mines can be permitted to go. We're not against all mining, but there's a time and a place for it. We need better local municipal control, and who better to say than the citizens who live in the area and their municipal councillors? We have support for our brief. We have support from Environment Haliburton. We have support from our municipalities. I spoke last week to our warden of Haliburton county about what I was going to say today. We've had support from our municipalities.

We also need, as you've heard today, better environmental control at the early stages of exploration so that we don't get the pillaging of the land by people who come in, do their exploration, blast a bit of ground and walk off. The confrontation comes between people who have moved into this area and developed a recreational business, developed a cottage industry. Mining used to take place in Haliburton 50 years ago, 70 years, 100 years ago, but in the last 50 years it's been cottage development. Now, when you come and tell somebody that they're going to have a 3,500-acre open pit that's 400 metres deep and a mile long, that's the complication.

The Chair (Mr. David Oraziotti): Thank you for your presentation today, gentlemen. Mr. Bisson, questions.

Mr. Gilles Bisson: Let me make this comment, and after that you can comment and see if you want to ask me a question. That is, I hear what you're saying because the issue that you raise, cottagers in southern Ontario, is no different than the issue that's raised by First Nations in northern Ontario. That's a basic question: Who should have the right to decide if a mine is going to be developed in your backyard? That's a pretty simple thing. First Nations argue, "We should have that right," and I suppose that's what you're arguing as well.

It brings me to what the question's going to be. How you're trying to get at this, as I see it, is you're trying to say, "Give municipalities a greater say when it comes to the official plan." The problem I have in looking at that is that a municipality, by and large, is ill equipped to deal

with that question. I come from the city of Timmins, where there's a lot of expertise in mining; I think even our municipality would have a bit of difficulty dealing with some of the permitting issues, some of the environmental issues and others. If your stated goal at the end is to say, "We want to be able to determine what is the best end use for the territory that we have," shouldn't we rather just answer the question, yea or nay on development, rather than try to do the back door through the municipal assessment act and give municipalities the right to determine if a mining project goes forward and how it does? I fear many municipalities don't have the capacity, number one, and municipalities are much more subject to being lobbied to allow a project to go forward than the provincial government will ever be. Your comments and questions back to me.

Mr. Roger Young: We're all subject to being lobbied; that's part of life. Can the municipality deal with it? I think so. Right now you give them powers to draft zoning bylaws. They say agriculture is permitted here, industry is permitted here—

Mr. Gilles Bisson: That's right, but they decide if there's going to be that development in the first place. My point is if we're trying to regulate mining through the municipalities, I think it becomes difficult.

Mr. Roger Young: Let me give you an example: We have two pieces of land—

The Chair (Mr. David Oraziotti): Gentlemen, you know what? That's time for questions. We're going to have to move to—

Interjections.

The Chair (Mr. David Oraziotti): Sorry, you've used all the time introducing your question.

1630

Interjections.

The Chair (Mr. David Oraziotti): Mr. Colle, go ahead.

Mr. Mike Colle: I'll give you 30 seconds.

Mr. Roger Young: Two pieces of land: One's private, one's crown. They're smack beside one another. This guy puts up his development—his cottage, his tourist business, whatever. He's subject to all the zoning bylaws. This crown land falls within the municipality but it's not subject to the bylaw; it's not subject to the official plan. A bureaucrat in Toronto says, "Yeah, you can put a mine in there." You can spend \$4 million building a tourist development, developing this land, creating jobs, and wake up the next morning and find you've got a big open pit next to you and you've got nobody coming.

Mr. Gilles Bisson: Then you would give municipalities the right to say yes or no?

Mr. Roger Young: Yes, just the right to say yes or no.

The Chair (Mr. David Oraziotti): Sure. Very briefly, Mr. Colle.

Mr. Mike Colle: I totally agree with my colleague Mr. Bisson. If you give municipalities the right to veto or to approve mines in their jurisdiction—I don't know if you know the history of the Oak Ridges moraine, where I

spent five years of my life trying to get a regional plan of protection there. Well, the developers would play one municipality off of another because the municipalities were so starved for assessment that you would get municipalities against each other trying to attract these mines. You're going to do the exact opposite of what you're trying to do by giving local municipalities authority to permit or disallow mines to go into their regional district. I think you're going down a path that's been proven to be wrong in the past.

Mr. Roger Young: That may be so, but that's the democratic process, isn't it? You're allowing the people of the area, who are most affected, to speak.

Mr. Mike Colle: But then you're going to have someone in the municipality next door who's going to allow mining to take place and the trailing is going to go downstream and pollute you anyway because the municipality upstream is doing it. That's what's happening with sprawl and all this development for the last 40 years in Ontario, so that's why you need some regional provincial oversight, or else you're going to get this piecemeal, ad hoc approach which is really detrimental to what you're trying to do.

The Chair (Mr. David Oraziotti): Thanks, Mr. Colle. It's time—

Mr. Robin Simpson: May I answer very quickly?

The Chair (Mr. David Oraziotti): No, not right now. Mr. Hillier has the floor.

Mr. Randy Hillier: It's interesting to hear the Liberals argue black is white and then white is black. Here we are hearing the arguments all day that we need to give the communities in the north the ability to make decisions for themselves on their economic development and their planning and their mining, and then at the same time that people in Haliburton are too stupid to make those decisions as well, that they are not competent and they cannot get the expertise to make those logical decisions and they will be lobbied by somebody who will make them make poor decisions.

We can see that this Mining Act, if it was to solve the problems, should just adhere to democratic principles of a greater say for municipalities in the land use in their areas and also a share in the revenues in the southern communities, as we're proposing in the north as well. What's good for the goose is good for the gander and they fly in the same direction, whether north or south.

Mr. Roger Young: Mr. Hillier, my colleague just granted you an automatic lifetime membership in our association.

Mr. Robin Simpson: The other thing that they could do with one stroke of the pen is take crown land off the map for staking in southern Ontario. There will never be a mine in southern Ontario ever again anyway, but it puts us through years and years—

The Chair (Mr. David Oraziotti): Thank you, gentlemen, for your presentation.

Mrs. Carol Mitchell: I have the largest salt mine in the world in my riding.

Mr. Robin Simpson: And I'm sure it'll last for another—

The Chair (Mr. David Oraziotti): Thanks for your presentation.

Mr. Roger Young: Thank you, Mr. Chair. You're very generous.

COTTAGERS AGAINST URANIUM MINING AND EXPLORATION

The Chair (Mr. David Oraziotti): Our next presentation: Cottagers against Uranium Mining and Exploration.

Ms. Susanne Lauten: Hello.

The Chair (Mr. David Oraziotti): Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation and five for questions, so just state your name and you can go ahead.

Ms. Susanne Lauten: Thank you, honoured members. My name is Susanne Lauten and I'm the founder of Cottagers against Uranium Mining and Exploration. I realize it's been a long day and all this talk about cottaging makes us think it's one place we'd like to be, but I'm here to represent the thousands of cottagers from Elliot Lake all the way down to Haliburton and the Kawarthas and over east to Frontenac, thousands of cottagers and waterfront property owners who are extremely concerned about the uranium exploration that's going on in their area and, in some cases, on their private land. I'm here to ask you today to include a ban on uranium exploration and mining in the Ontario Mining Amendment Act, Bill 173, granting Ontarians the same protection that residents of British Columbia already enjoy. But if you're not able to do this, we ask that you design strict environmental and health regulations for every stage of uranium mining in Ontario, including basic exploration.

I'd like to take a look at uranium mining in the past, present and future. Looking to the past, I'd like to quote from the Ontario Royal Commission on Electric Power Planning, the Porter report, which stated, "The mining and milling of uranium ore produced very large volumes of long-lived, low-level radioactive tailings which have leached into waterways in the vicinity of Elliot Lake, Ontario, thereby posing serious health and environmental problems." Many residents of Elliot Lake have come to me—some of the miners as well—and said to me, "Please don't let what happened at Elliot Lake ever happen again."

Now I point out the second paragraph, which is about Saskatchewan. It states, "Within three months (at the Key Lake, Saskatchewan mine) there had already been eight spills totalling 1.5 million litres of radioactive liquid waste." This is from Canada's Deadly Secret, a book by Jim Harding, the retired professor of environmental and justice studies at the University of Regina.

This brings us to the present, where cottage country in Ontario is under siege. In the past three years, uranium prospectors and mining companies have staked about

40,000 acres in rural cottage country, some on privately owned land. They are actively exploring for uranium and planning open-pit mining operations.

In Haliburton, for example, an Arizona-based company staked a 1,000-hectare claim, then they bulldozed 20 hectares of mature forest, of which you've seen a brief photo, that they scraped right to bedrock, followed by between 40 and 50 test drills, each 400 feet deep. Local residents soon reported that this drilling had contaminated their well water with uranium. This exploration was completed without environmental assessment and it took place, as mentioned before, just metres from the Irondale River, headwaters to the Trent-Severn Waterway and drinking water for thousands of people.

These dangers are real because the BC Medical Association states, "Radon contamination of groundwater may be a health risk in pincushion drilling typical of [this] advanced exploration."

And uranium mining's future? There's lots of evidence saying there is no economic future for uranium mining in Ontario.

I quote to you again from the BC Medical Association: "Uranium tailings will remain radioactive for hundreds of thousands of years, and will require such expensive long-term surveillance and maintenance by government and local citizenry, as to make statements about uranium mining providing revenue very misleading."

Professor Harding provides a second quote. He says, "From 1975-1985, Saskatchewan's uranium sales totalled \$2 billion. But only \$130 million came back to the province as revenues. Far less than the province spent to expand the uranium industry." As well, there will be very little employment gain. Professor Harding says, "As in all resource industries, capital and technology are replacing jobs in uranium mining. The industry produced only half the direct jobs that were promised at the Cluff Lake (Saskatchewan) Board of Inquiry. Northern unemployment did not lessen as the uranium industry expanded, and the long-term environmental and social costs are being left for the people of the province and the north to bear."

1640

By contrast, I present to you cottaging and tourism. I am a cottager and I've been a waterfront property owner for 14 years. Along with the other property owners in Haliburton, we contribute 80% of all the local municipal tax revenues. Hundreds of thousands of cottagers and tourists inject millions of dollars into local businesses: building contractors, lumberyards, hardware and grocery stores, marinas, theatres and restaurants. And an increasing number of cottagers are retiring full time to cottage country, further supplementing the region's income. By contrast, the much-vaunted uranium mining industry is a short-term industry that will deplete the long-term health and wealth of Ontario's cottage country.

In conclusion, it is cottaging and tourism and recreation that is the long-term sustainable wealth of the region.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation today. Government caucus, Mr. Brown, questions?

Mr. Michael A. Brown: Yes. I would love to invite you to come to one of the most beautiful cottaging places in the world, which would be Elliot Lake. Elliot Lake, as you know, has become a vibrant retirement community, with thousands upon thousands of Ontarians choosing to live in one of the finest full-service communities in the province. In the last five to 10 years, it has opened a cottaging industry on the very lakes that you're talking about, which supply some of the greatest fishing and outdoor opportunities in the province. I encourage you and any others to come visit Algoma East and the fine services that we provide to cottagers because we enjoy having people from all over the province and, indeed, the world join us in beautiful Elliot Lake. Thank you.

Ms. Susanne Lauten: Yes, and I would be very happy to go there and I'm very happy with what you're doing at Elliot Lake. That is indeed the future. You are actually doing what I am suggesting. The future is recreation, cottaging and retirement homes. The many cottagers who approached me at the Cottage Life Show, who were very happy to buy land and build cottages at Elliot Lake, were the cottagers who said to me, "Please, for heaven's sake, don't ever let them mine at Elliot Lake again," and that's exactly the same point, I believe, that you're making. The future is cottaging, recreation and retirement, and I really think the people who are investing in rejuvenating Elliot Lake would be devastated if uranium mining were to open in that area again.

The Chair (Mr. David Oraziotti): Thank you for your comment. Mr. Hillier?

Mr. Randy Hillier: I'll pass.

The Chair (Mr. David Oraziotti): Mr. Bisson.

Mr. Gilles Bisson: No, you were pretty darn clear, I thought.

The Chair (Mr. David Oraziotti): Thank you very much for coming in today. We appreciate your presentation.

Mr. Gilles Bisson: That good plug for Elliot Lake was one of the best I've heard in a long time.

The Chair (Mr. David Oraziotti): Fantastic commercial, Mr. Brown.

Interjection.

Ms. Susanne Lauten: No, I don't want to slam Elliot Lake; I want to protect Elliot Lake. That is why I want—

Interjection.

Ms. Susanne Lauten: Yes. Protect Elliot Lake.

The Chair (Mr. David Oraziotti): All right, folks. Thank you. Thank you for your presentation.

STEWART JACKSON

The Chair (Mr. David Oraziotti): The last presentation of the day: Stewart Jackson. Good afternoon, sir. Welcome to the Standing Committee on General Government. You have the privilege of presenting last today. You have 15 minutes for your presentation and

five minutes for questions from committee members. Please state your name for the purposes of Hansard and you can begin when you're ready.

Mr. Stewart Jackson: I am Stewart Jackson, Canadian citizen. I reside in the US but I originated 100 miles north of Toronto, had my education at the University of Western Ontario, the University of Toronto and my PhD from the University of Alberta. Thank you for the opportunity to address the committee this afternoon.

I've spent my entire working career in the mining industry, starting in 1959. At this point, I have 50 years under my belt. I think I have some relevant experience for the question under consideration today.

I won't belabour some of the points that have been severely beaten up by a number of individuals already in both verbal and written submissions. I simply want to address three significant points.

I started off in 1959 in the boreal forest of northern Quebec up on the Harricana River, very close to James Bay. I learned very quickly that the boreal forest is not a forest; it is a large peat bog and swamp. I subsequently learned that this covers most of Quebec and three quarters of Ontario.

The great north does not have a timber industry. There are no trees up there—a very, very large percentage of it. The southern fringe has trees. I was raised on the long end of a crosscut saw and a three-pound axe; I know what timbering is. My grandfather had a sawmill; I know what lumber is. I also know that trees in the great boreal forest of the north take 150 years to grow back. Nobody's going to cut them in the first place. They aren't big enough and they take too long to grow back.

Ontario is fundamentally a mining-based province. All of those peat bogs and swamps of the far north are underlain by wonderful, prolific rocks. The peat bogs themselves don't need to be locked up for preservation. You simply can't get in there, so they have this inaccessible aspect themselves. They basically will never be violated to any great extent. You simply can't get into a swamp. The bogs of southern England are still there. The Okefenokee swamp is still there. These things don't change with time. They're very difficult to access.

Tourism is not very wonderful in the peat bogs of the far north. It does work down south. I have great respect for the tourism industry, but tourists are not going to flock to this so-called Grand Nord. It simply is inhospitable, inaccessible, it doesn't have very many attractions when you get there, and there are a few bugs.

Our mineral industry is based largely on that wonderful part of the world. It disturbs very little of it but returns great economic benefit. I think the Grand Nord has to be kept accessible for the future of Ontario and for the future of Canada.

My second point is that instant evaluation perceived under some of this planning mechanism simply cannot happen and will not happen, and is not possible. We have been prospecting and mining in Ontario and the rest of Canada for a hundred years. One of the greatest booms in

gold exploration right now is in Timmins, Ontario, right in the heart of downtown, after 100 years of prospecting and exploration. Brand new discoveries are being made every month. You cannot evaluate land in 15 years of planning by some instant process by some people who imagine themselves to be very brilliant and know whether land is good or bad for mineral potential. It's a long process, it takes tens of years, and after a hundred years we're just scratching the surface.

Most of the mineral potential in Ontario is still untouched and exists in the Grand Nord. The very basic maps show these prolific mineral belts covering all of this proposed withdrawal in the north. If we withdraw that, we're basically cutting off our nose in hopes of achieving something and supposedly protecting it—from whom? Protecting it from ourselves? I don't think we're that bad. We've been around for a hundred years. We haven't disturbed things that much, but we have certainly provided an economic base for the province of Ontario. It's a very small trade-off.

Rather than labouring more on that, I want to illustrate to you, in part from my own experience, some of the major discoveries that are current—they're not very old—that have been made in what would be classified as completely unfavourable terrains and inhospitable land that probably should just be put into a park if somebody is sitting around pontificating and pretending that they know what they're doing about selecting or not selecting land for preservation. My whole objective is to maintain things open. We're not going to destroy the park potential or the recreational aspect of any part of northern Ontario. No matter how much mining we're doing, no matter how much mining might take place over the next 200 or 300 years, it will only still destroy a very small amount.

In Timmins, the Kidd Creek mine was discovered in 1964, the year I graduated as an undergraduate from college. That mine is still going. It sat right off the end of the Timmins airport. It was undiscovered even though Timmins had been there since the turn of the century. Simply because of new concepts and new geophysical techniques, they went in and drilled the thing, and it's been mining ever since, supporting all of northern Ontario and a good part of southern Ontario—one mine, completely unknown. Somebody could just say, "Oh, that would make a nice park. There are nice trees out there." There have been parks put up there in similar areas since, simply because there were lots of aspen trees on them. That was the justification for some of the park withdrawals in northern Ontario: lots of aspen trees. Well, there are lots of aspen trees in most parts of the world. It's not something to create a park over, simply because there are aspen trees.

1650

The Athabasca basin for uranium: We had the discussion on uranium. In the bogs of northern Saskatchewan, some people persisted in doing exploration on what would be classified as wonderful land to just leave for a park. It's a great big bog, lots of lakes etc., etc. They discovered some extremely rich uranium deposits

in the 1960s and 1970s. Those produce most of Canada's uranium and a very good percentage of the world's uranium today.

And they're making discoveries. There was an announcement of a new discovery today in the news. There will be more discoveries made in an area like that—a very, very small disturbance, but producing, say, 20% of the world's total uranium production, which will fuel and provide electrical power for the rest of the world for a long time.

The Victor diamond mine up in northern Ontario: De Beers started, in the 1940s, to prospect here. They intensified their program in the 1960s and 1970s. Some of my associates took over with British Petroleum, doing similar work in the 1960s and 1970s—I was involved in part of that. But the Victor diamond mine is very, very rich. It's \$450 a carat versus the average of \$100 a carat. Otherwise it wouldn't be in production today as a fly-in operation. It's very remote, very expensive, but it's also very rich and attractive, even in today's cost structure up there.

As a spinoff from that, the geophysical work that was done on a regional basis—I actually participated in a company that owned it at one time and sold that geophysical data off. Guys went in. They started drilling a bunch of other anomalies. They found a bunch of copper-lead-zinc targets. In the last two years, they've stepped out from those. They found a huge nickel deposit, which made a major announcement on the news today. The stock has performed wildly over the last—

Interjection.

Mr. Stewart Jackson: So, the big Noront nickel discovery and subsequent discoveries of chrome—now, nobody ever looked for chrome in Canada before. It was simply thought to not exist in Canada and particularly up in the bogs of northern Ontario. Well, there's probably two billion tonnes of chrome there right now, and I'm just using an arm wave on that. It's the largest chrome reserve and probably the richest chrome reserve in the entire world, and probably represents a 200-year supply of chrome for the entire world—completely, absolutely unknown three years ago—in the bogs of the far north.

This is an example of what I say can be replicated perhaps 10,000 times over history in the far north. We simply cannot say that because something isn't known, doesn't stick out on the surface and we don't think it's there, it is not there. These things pop up. Prospectors find them. That's my business, to find them.

The Red Dog lead-zinc mine sits in some nasty old shaley rocks out in far-western Alaska, next to the Bering Sea. It's the far end of the Brooks Range. Nobody looked there because those rocks were no good for finding any metals. Well, somebody didn't believe that, so, as an evaluation on some general terrain for possible inclusion within a park, there was some work done out there. I went out and staked some claims in 1975. The Red Dog mine was sitting there, unknown, unexplored, a mile and a half long, half a mile wide—obviously 500 million tonnes, just from walking over it for half an hour. It now

produces 14% of the world's zinc, it probably has 20% of the world's zinc reserves—all of this in an area that, if it had happened to have a peat bog over it, nobody would have given a second glance or paid any attention to it.

This is the type of thing that you find all the time in our business. You cannot say that just because somebody doesn't think it's there, it may not be there. Different people have different views; different people have different concepts.

Teck Cominco, which is a Canadian company, mines that today. Seventy per cent of the employees are the NANA native corporation, and the NANA native corporation owns 50% of that mine. They started out because of a political illegal withdrawal by the administration in the Department of the Interior and an illegal withdrawal by the Secretary of the Interior and the President. NANA corporation ended up with 25%. They now own 50%, but it produces today 14% of the total world's zinc reserves—completely unknown in 1974.

Olympic Dam in Australia, sitting out in the outback in an absolutely barren desert—no reflection of anything on the surface. Some guys went out there and started prospecting geophysically and conceptually. They eventually drilled down and found one of the largest copper-gold-uranium deposits in the entire world—completely unknown in the 1960s and now one of the biggest producers in the world—blind. "It would make a wonderful desert park. There's nothing out there. Who's to say we shouldn't just put that in a park? There's no obvious mine sticking out; there are no mines there." Well, I'm sorry; it is there.

The Viken uranium deposit in Sweden: I've been involved in this for the last several years. There are a billion pounds of uranium sitting there on the surface today because we drilled it out over the last three years. There are probably 10 billion or 15 billion pounds, probably the largest energy reserve in all of Europe. It was geological, mineralogical curiosity until a couple of years ago when the price of uranium changed. It's now an economic target and has infinite capability of producing energy for wherever it's needed. It also contains 15% carbon and a barrel and a half of oil per tonne. It's kind of a weirdo.

I've spoken at length, I guess, on the Attawapiskat Ring of Fire—completely unknown. The Victor mine for diamonds spawned the drilling for copper, lead and zinc and spawned the drilling for chromite. It's now a huge resource. It needs a road to it, and it happens to sit up in the Grand Nord. How many more are up there? Probably hundreds and hundreds and hundreds if it's left open for development of the basic economic need for an industry in Ontario.

I was raised a farmer up in the sticks here to the north. Farming isn't all that wonderful in Ontario. The timber industry's pretty dead. Tourism's okay, but tourism is just small potatoes compared with the fundamental wealth produced by mining.

I encourage the committee to shelve these two bills until something reasonable and rational can be put on the

table; I don't think either one of these bills is at the present time. Not to be insulting to the people who tried to put them together, but I would be embarrassed to have tabled a piece of legislation like either one of these pieces of legislation. They're convoluted, contradictory, there are new loops in the whole thing. Please, just keep the north open. Let us do our work; we'll keep the industry supplied with new finds.

Thank you for the opportunity to present this.

The Chair (Mr. David Oraziotti): Thank you, Mr. Jackson, for your presentation. We'll start with the Conservative caucus. Mr. Hillier, do you have any questions?

Mr. Randy Hillier: It's hard to begin. Where to start? Thank you very much for being here. It's been a pleasure to listen to you. I trust everybody will take your wise words under consideration with these two bills.

I just noticed recently that the Fraser Institute had a study out about mining in different jurisdictions in North America and around the world. In that, Ontario has been dropping in places to invest in for mining. I think both these bills will result in a tremendous evacuation of interest in our wealth up in the north.

Mr. Stewart Jackson: Yes. We were number two; I think we're 17 and sliding like a brick off a roof.

Mr. Randy Hillier: Yes. I do believe that we have conflicts in mining. These are not going to address them other than to diminish the role of mining altogether and diminish our wealth and prosperity in this province.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. Mr. Bisson, questions or comments?

Mr. Gilles Bisson: I just want to protect the tourism aspect of the far north. There are some opportunities there. The thing is we are not doing a very good job at

either level of government to try to identify that and work with local communities to make that happen. However, I believe that the two can coexist; I think there's a way of being able to get to our stated aim.

But your points are well made, and I have more of a comment. People sometimes do things with the right intentions. We want to protect land for the future etc. The reality is 99.9% of the territory in the far north is protected already by virtue of its inaccessibility. If you do find a mine, like we did with the Victor diamond project, we need to have rules that say how you're going to develop it so that there's a buy-in from First Nations, so that there's some benefit for the First Nations of the province and so that we have some protection when it comes to the environment. There are ways of doing this sustainably. I guess that's what the real test is. I thank you for your presentation and understand your fervour.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. Questions or comments, Mr. Brown?

Mr. Michael A. Brown: I just want to thank you for coming. I think some of the insight you brought about the importance of the mineral industry and mining not just to Canada and not just to Ontario but to the world brings a perspective that is fresh today. I don't think we've quite heard it before, and we greatly appreciate that.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. That's our time today.

Mr. Stewart Jackson: Thank you very much.

The Chair (Mr. David Oraziotti): Committee members, the committee will adjourn to Monday, August 10 at 9 a.m. in Sioux Lookout. Thank you, the committee's adjourned.

The committee adjourned at 1700.

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mr. Robert Bailey (Sarnia–Lambton PC)
Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)
Mrs. Linda Jeffrey (Brampton–Springdale L)
Mr. Kuldip Kular (Bramalea–Gore–Malton L)
Mr. Rosario Marchese (Trinity–Spadina ND)
Mr. Bill Mauro (Thunder Bay–Atikokan L)
Mrs. Carol Mitchell (Huron–Bruce L)
Mr. David Oraziotti (Sault Ste. Marie L)
Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants

Mr. Toby Barrett (Haldimand–Norfolk PC)
Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)
Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Mike Colle (Eglinton–Lawrence L)
Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Also taking part / Autres participants et participantes

Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton–Est–Stoney Creek ND)
Mr. Michael Prue (Beaches–East York ND)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. James Charlton, research officer
Legislative Research Service

CONTENTS

Thursday 6 August 2009

Subcommittee reports	G-811
Mining Amendment Act, 2009 , Bill 173, <i>Mr. Gravelle</i> / Loi de 2009 modifiant la Loi sur les mines , projet de loi 173, <i>M. Gravelle</i>	G-813
Far North Act, 2009 , Bill 191, <i>Mrs. Cansfield</i> / Loi de 2009 sur le Grand Nord , projet de loi 191, <i>Mme Cansfield</i>	G-813
Ontario Real Estate Association	G-813
Ms. Barbara Sukkau; Mr. Jim Flood; Mr. Peter Griesbach	
Ontario Forest Industries Association	G-815
Mr. Scott Jackson	
Mr. John Edmond	G-819
World Wildlife Fund–Canada	G-822
Mr. Monte Hummel	
Bedford Mining Alert	G-825
Ms. Marilyn Crawford; Mr. Alexander Cameron	
Nishnawbe Aski Nation	G-828
Grand Chief Stan Beardy; Mr. Stephen Kudaka	
Ontario Bar Association	G-831
Mr. Jim Blake; Mr. Kenning Marchant	
Ontario Waterpower Association	G-834
Mr. Paul Norris	
Windigo First Nations Council	G-838
Mr. Frank McKay	
Canadian Boreal Initiative	G-840
Mr. Larry Innes	
Coalition for Balanced Mining Act Reform	G-842
Mr. Charles Ficner; Mr. David Gill	
Ontario Prospectors Association	G-845
Mr. Garry Clark	
Prospectors and Developers Association of Canada	G-848
Mr. Jon Baird; Mr. Michael Hardin	
Citizens' Mining Advisory Group	G-851
Ms. Kay Rogers	
Mr. Robert Lawrence	G-853
Community Coalition Against Mining Uranium	G-855
Mr. Wolfe Erlichman	
Sagamok Anishnawbek	G-858
Chief Paul Eshkakogan; Mr. Dean Assinewe	
MiningWatch Canada	G-861
Mr. Ramsey Hart	
Ontario Nature	G-864
Ms. Caroline Schultz	
Fight Unwanted Mining and Exploration	G-866
Mr. Robin Simpson; Mr. Roger Young	
Cottagers Against Uranium Mining and Exploration	G-869
Ms. Susanne Lauten	
Mr. Stewart Jackson	G-870



G-33

G-33

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Monday 10 August 2009

Journal des débats (Hansard)

Lundi 10 août 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Far North Act, 2009

Comité permanent des affaires gouvernementales

**Loi de 2009 modifiant
la Loi sur les mines**

Loi de 2009 sur le Grand Nord

Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 10 August 2009

Lundi 10 août 2009

The committee met at 0902 in the Sunset Suites in Sioux Lookout.

ELECTION OF ACTING CHAIR

The Clerk of the Committee (Mr. Trevor Day): Honourable members, it's my duty to call upon you to elect an Acting Chair. Any nominations? Ms. Mitchell?

Mrs. Carol Mitchell: I would move that Ms. Jeffrey be nominated.

Mr. Gilles Bisson: I would second that.

The Clerk of the Committee (Mr. Trevor Day): Ms. Jeffrey, do you accept the nomination?

Mrs. Linda Jeffrey: Yes.

The Clerk of the Committee (Mr. Trevor Day): Any further nominations? There being no further nominations, I declare nominations closed. Ms. Jeffrey, would you please take the chair as Acting Chair?

Mr. Gilles Bisson: May you live up to the expectations that we have raised and placed upon your shoulder.

The Acting Chair (Mrs. Linda Jeffrey): Yes, it's a huge responsibility.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines, and Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

The Acting Chair (Mrs. Linda Jeffrey): Good morning, committee. We've just learned that our first delegation, the Friends of Nishnawbe Aski Nation, has cancelled.

PORCUPINE PROSPECTORS
AND DEVELOPERS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our second delegation, the Porcupine Prospectors and Developers

Association, is here. I think we're going to proceed with them unless there's any other business.

Seeing none, could we get Kristan Straub, president—*Interjection.*

The Acting Chair (Mrs. Linda Jeffrey): I presume you are the speaker for Porcupine Prospectors and Developers Association and you're not Kristan.

Mr. Bill MacRae: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Good morning. Could you identify yourself for Hansard?

Mr. Bill MacRae: Yes, I'm Bill MacRae. I'm the vice-president and past president of the Porcupine Prospectors and Developers Association.

The Acting Chair (Mrs. Linda Jeffrey): Just before you begin, just so I can go through my preamble, you'll have 15 minutes for your presentation. I'll warn you if you get close to the end; I'll give you a one-minute warning if you go over. There'll be five minutes for questioning. Okay? Welcome.

Mr. Bill MacRae: Good morning, Madam Chairman and committee members. I am Bill MacRae, vice-president and past president of the Porcupine Prospectors and Developers Association. Thank you for providing me with the opportunity to be present here today and speak with you.

The PPDA is a regional association of prospectors, explorationists and mining industry members that can trace our beginnings back to 1939 and probably earlier. Our main function is to advise and consult with Ontario ministries and departments on any issue that affects the progression from prospecting to mine development and closure. We generally maintain a membership of 120 individuals and 15 corporate members. We have been by far the most active regional association in Ontario and are responsible for the establishment and structure of what is now the Ontario Prospectors Association.

There have been many statements of the age of the Mining Act in Ontario. The act was first put in place in 1873 and revised or rewritten on a regular basis—with the last in 1990, where the act was modernized to reflect the values of the time with changes to protect surface rights holders and switching to a monetary system for maintaining title to crown land mining rights.

The present mining industry is governed by the Mining Act and is now heavily impacted by the Endangered Species Act, the boreal initiative and now the Far North Act and the Mining Act modernization. We operate with

permits and guidance from the Ministry of Labour, Ministry of the Environment, Public Lands Act, Forest Fires Prevention Act, the Endangered Species Act, the parks act and many others.

The PPDA position on Bill 173 and Bill 191: Both acts have been written and put in place far too quickly, with many contentious issues not adequately dealt with. To this point, Bill 191 is so poorly written that it has to be withdrawn and rewritten to be clearer, and appropriate funding put in place to move forward on a reasonable timeline.

The minister's statements on Bill 173 emphasize that the new act is a balanced approach. Does this mean that the present act is unbalanced? Public opinion is that the Mining Act is being rewritten to placate special interest groups such as cottagers and surface rights holders in southern Ontario. In recent legal rulings, the Ontario government has been charged with the responsibility of being the lead in negotiations with First Nations. This act is pushing that obligation down to individuals and the mining industry.

Specific issues with Bill 173 that have been identified by our membership are free entry restrictions and security of title; indiscriminate withdrawal of mining rights; far too much is being shoved into regulations; exploration permits; the power of search and seizure exceeds necessity; downloading of the responsibility of consultation with First Nation communities; payment in lieu of assessment to maintain mining rights; and prospector awareness programs. I will now discuss selected issues in more detail.

Concerning free entry and security of title: Free entry has been a long-standing right of the individual or company that holds the mining rights to a claim. If the crown allows an individual to stake a claim, there has to be an inherent right to be able to explore said claim. Compensation to surface rights holders has been in place since the 1908 Mining Act, and restrictions on what land can be staked, such as orchards or improved areas. Upon acquiring the mining rights, if a company cannot then explore the property, it is like renting an apartment but having to get permission from the other tenants to move in. Who, then, is in control of the mining rights? Certainly not the crown, if small, vocal groups can force the crown to remove mining rights for their own personal interests.

The uncertainty of obtaining the right to explore and mine if a mineral deposit is discovered leaves a company in the position of being unable to raise exploration monies on the public market because there's no security of title. New requirements such as the exploration permit and the ensuing delays to process the permit will create a restriction on how quickly an individual or company can react to a very dynamic industry that needs to be able to change and adapt programs almost daily as new information is acquired. This ability to react is what is expected from investors and if hampered will limit the funds available.

The next issue is native consultation. There have been many issues that our members have experienced with

consultation. We find that the native communities do not have the capacity to deal with the present amount of requests for consultation. What will happen when we are mandated to consult?

The KI/Platinex court decision clearly mandated that the crown has the responsibility to take the lead in negotiations between mining companies and First Nations. Now they want to download that responsibility onto individuals and companies. Every individual or company that anticipates negotiating with a First Nation community has to start with a blank slate because all previous agreements are not public information and no guidelines are available.

0910

Another issue is, what level of exploration triggers consultation? I have been told that First Nation communities want to be consulted prior to staking and have the right to block a company from acquiring mining rights in their area—i.e., have a list of acceptable companies to deal with.

Bill 173 is very vague on the issue of dispute resolutions that are sure to arise from consultation. There are no guidelines for the establishment of timelines for resolutions or how the individual in the enviable position can accomplish the mediation in a timely manner. Experiences with the mining commissioner indicate that some issues could take years to resolve.

We would concur with other associations that Bill 173 will only confuse and create adverse situations between industry and First Nation communities, which is contrary to the intent of the bill. Not enough thought or consultation has been put into this issue to come to an amicable solution.

Bills 173 and 191 have been put in place long before they are ready. This was clearly done for political posturing and has nothing to do with full consultation with all parties impacted by such legislation. These bills could be in place for 20 years or more. Is the government willing to be seen as someone who would rather do something quickly or would it rather be recognized as doing the best effort possible?

In conclusion, the parks act is in place to protect parks, the environmental act is to protect the environment and the Endangered Species Act protects endangered species. Why does Bill 173 penalize the mining industry and place roadblocks in the search for and development of new mines, a wealth generator for the province of Ontario? The future of Ontario, if this legislation is enacted, is that the rocks do not stop at provincial boundaries, and if this bill is not changed, the grass will be greener across the border and exploration funds will flow to other jurisdictions.

Thank you. I'd now be pleased to answer any questions.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. MacRae. Our first questioner is Mr. Hillier.

Mr. Randy Hillier: Thank you very much for coming today. Listen, we've heard a lot of discussion at the earlier committee hearings as well. Just give me briefly

your views on what these two bills will do to mining and mining exploration. What do you see happening to the mining community if these two bills pass in their present form?

Mr. Bill MacRae: Past experience has shown that when acts or legislation change within a jurisdiction, such as in BC or Manitoba, exploration funds quickly flow to other places where it is far more favourable.

Mr. Randy Hillier: But we see in this act that we've got a lot of new amendments, especially to powers of inspection, search and seizure, the additional regulatory framework. Do you see that causing hardship for the mining industry?

Mr. Bill MacRae: Yes. The industry is very flexible and dynamic. It will go where it gets the best value for its dollar—

Mr. Randy Hillier: Where it's wanted, I guess.

Mr. Bill MacRae: —and right now with this, Quebec looks a lot better than Ontario.

Mr. Randy Hillier: Right. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. I notice in the recent paper here in Sioux Lookout that the Ginoogaming First Nation community just signed an MOU with a gold company, so obviously there is some movement forward with some of the First Nations communities, as you've expressed. What do you think the impact of the legislation coming forward would be, with the removal of 225,000 square kilometres of land from the north, on the southern area? Would there be an increase or a decrease in the pressures or activity in the southern part of the community?

Mr. Bill MacRae: There probably would be more pressures in southern Ontario. But the way the government has gone about withdrawing that land has made it so that security of title is not there; therefore, no investment will be made when you can't have security of title. So investment will move elsewhere, whether it's to other provinces or other countries.

Mr. Jerry J. Ouellette: So your comment is about the impact, because of cottagers and surface rights owners—will actually increase the pressure in those areas; that it's potentially hoping to clarify some of that problem.

Mr. Bill MacRae: Yes.

Mr. Jerry J. Ouellette: Okay, thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: A lot has been said, especially at our Toronto hearings, in regard to the request to have the mining rights coupled with the property rights. I'd like you to elaborate a bit on that. I take it what you're saying is, "No, don't do it." If not, how do you maintain assuredness on the part of the property owners that there is some degree of responsibility when it comes to exploration?

Mr. Bill MacRae: At present, there are adequate procedures and policies in place to protect the surface rights owners. In the act, there are provisions for restitution for damages or anything like that. I think you're really

getting to a point where if the mining rights are taken away, without regard for whether the mineral potential or anything else is of any value, then you're removing that value from the people of Ontario. It's something that can't be recovered. Not everybody in southern Ontario wants to block the mining. I would imagine that most people would be very welcoming to it if they found a monetary value in what they could do. A mining operation is really insignificant in size; it is not a huge blight on a landscape. It's pretty small when you look at most operations.

Mr. Gilles Bisson: In regard to first of all, the first step, the native consultation, and number two, IBAs or revenue-sharing—whatever form it must take—what currently is in the act doesn't seem to have the support of hardly anybody, either the developers or the First Nations, in its current form. The first question is, do you agree with the concept from the PDAC, that there has to be some form of consultation and in the end the First Nations have to have some sort of remuneration for activity?

Mr. Bill MacRae: Yes, but there's already movement in place for revenue-sharing, but revenue-sharing out of mineral taxes—

Mr. Gilles Bisson: Yes, not new revenue—

Mr. Bill MacRae:—not from the—

Mr. Gilles Bisson: The money the individual companies—

Interjection.

Mr. Gilles Bisson: Yes, I understand that.

Mr. Bill MacRae: And I think that is the way to go—and clear guidelines.

Mr. Gilles Bisson: So has your chapter done any work in order to look at how you can make this happen without throwing the baby out with the bathwater for both parties? And what would that be?

Mr. Bill MacRae: That's a long one.

Mr. Gilles Bisson: Exactly. I'll go to the cottage and talk to you.

Mr. Bill MacRae: Because it's so new, we haven't sat down and gone through it, like we have in the past. The revision in 1990, the land acquisition and mineral rights acquisition, was written by a committee in Timmins. I chaired that committee. We always are willing to—

The Acting Chair (Mrs. Linda Jeffrey): Excuse me, Mr. MacRae, can I ask you to wrap it up? You have about 30 seconds to answer the question, okay?

Mr. Bill MacRae: Okay. We've always been willing to participate and be involved, because if you're not involved you have no right to criticize it.

Mr. Gilles Bisson: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. MacRae.

From the government side, Mr. Brown?

Mr. Michael A. Brown: Thank you, Mr. MacRae, for making the journey here to Sioux Lookout.

Obviously, it's necessary that we get this right. That's why on the one bill we're out here right now, talking about the mining act. We're out here at second reading

for that, but we're also out here at first reading in regard to the far north bill, which of course means that there are going to be at least two opportunities to change that bill. We've obviously gone through a huge consultation on the mining act.

0920

You make some good points here, and I think they're the points that all of us, as legislators, are wrestling with: how to get this correct. I'm wondering if you have specific amendments that you would like us to make to clarify your position with regard to free entry and security of title, for example.

Mr. Bill MacRae: I could provide you with them—but the one point is, your extensive consultation didn't happen. This was a very short consultation. The last time, it took three years from initial introduction to when we were able to get the bill in place. So the time frame for public consultation is very short on this bill.

What happened in Timmins was, we got the briefing paper one hour before the workshop started, so we had no time to review or even think about what was in the document.

If we have the time to make recommendations and amendments, yes, we will put a committee together to do that.

Mr. Michael A. Brown: That's very good. We appreciate the good advice we get from the prospectors, because obviously they're a great generator of wealth in the north, particularly in northern Ontario.

With regard to the aboriginal consultations, as you probably know, there is some concern—from some aboriginal communities, anyway—that a prospector would need to get permission to even stake. Your position, obviously, is not that.

Mr. Bill MacRae: They want the right to not only consult on staking, but also to be able to refuse you the right to stake. I've been told this by chiefs and some of the local tribal councils in Timmins. They want the right to select who operates on their traditional lands. That becomes non-competitive, and it just does not work in an industry such as this. You have to have that competition and the competitive nature of things to be able to raise money and to work. If you don't raise the money, you don't do the exploration; no mines are found.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much, Mr. MacRae, for being here today.

CAT LAKE FIRST NATION

SLATE FALLS FIRST NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Boreal Prospectors Association. Is Mr. Gordon here? No? All right. I understand Mr. Gordon isn't here, but we have two other delegations that are going to join forces and appear before us: the Cat Lake First Nation and Slate Falls Nation. Could they come forward? These are our sixth and seventh presenters on your list, if you're following along.

Mrs. Carol Mitchell: Are they together?

The Acting Chair (Mrs. Linda Jeffrey): Yes.

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): I think we're going to try to find some flexibility. I don't think either of them can fill the full delegation, so we'll try to accommodate.

Good morning, gentlemen. Are you ready to go?

Mr. Steve Winsor: Yes, we are.

The Acting Chair (Mrs. Linda Jeffrey): If you could identify yourself for Hansard before you speak. I'm going to try to find some flexibility, because I understand that you don't think you're going to be able to fill the whole time. I don't think I'm going to need to give you a warning, but when you get to the end we'll try and divide up the time equally. So welcome.

Mr. Steve Winsor: The reason is that it is a joint initiative between Cat Lake and Slate Falls First Nations. The Slate Falls representative, Gordon Carpenter, couldn't make it today for health reasons. So I have Wilfred Wesley here, who is the Cat Lake community liaison, and I am Steve Winsor, the project manager for the land use planning project.

The Acting Chair (Mrs. Linda Jeffrey): Welcome.

Mr. Steve Winsor: Thank you very much.

Mr. Gilles Bisson: Chair, I'm just wondering what spot they're filling.

The Acting Chair (Mrs. Linda Jeffrey): They're jumping ahead of the Boreal Prospectors right now because they're not here yet.

Mr. Gilles Bisson: So it's Cat Lake; right?

The Acting Chair (Mrs. Linda Jeffrey): Yes.

Mr. Gilles Bisson: That's what I thought.

The Acting Chair (Mrs. Linda Jeffrey): This is Cat Lake First Nation and Slate Falls First Nation.

Mr. Gilles Bisson: Thank you.

Mr. Jerry J. Ouellette: Is that a 30-minute presentation?

The Acting Chair (Mrs. Linda Jeffrey): I don't think they're going to fill the 15 minutes at this point, so we're going to provide some flexibility to make sure there's enough time for questioning between the two groups. Welcome.

Mr. Steve Winsor: Thank you. We were told Friday to come and do a presentation here about our land use planning initiative and give a little update on sort of where we are with our planning process, and speak a little bit on Bill 191 and the far north legislation and how the communities feel, if supportive or not.

We'll just start off a little bit by giving an outline of where we are and what we do. The green area on the map here is the far north. As you know, Pikangikum and the Whitefeather Forest is located in the black boundary, which is west of the Cat Lake and Slate Falls First Nations land use planning area. To the east we have Mishkeegogamang and Eabametoong. They also have a land use planning initiative that's occurring simultaneously within the northwest region.

Here is a blow-up of the Cat Lake and Slate Falls First Nations land use planning area. We have Cat Lake in the centre of the planning area, which has, I've been told,

approximately 600 or 700 membership. Slate Falls is located to the south; there's approximately 200 membership in the community. The planning area itself is 1.5 million hectares in size. It has several existing interests, from tourism to mineral interests, as well as the established Pipestone River Provincial Park within the planning area.

Adjacent First Nation communities, moving from the north to the east, would be Pikangikum, McDowell Lake First Nation, North Spirit Lake First Nation, North Caribou Lake First Nation as well as Mishkeegogamang First Nation.

Wilfred is going to discuss a little bit about our process and expectations and outline a little bit of our strategic action plan, a little history that sort of helped us get to this point so far. So if you're comfortable, Wilfred, the slide is yours.

Mr. Wilfred Wesley: I hope I can be clear here. What we do in this land use planning, things like expectations, because a little over a year ago—we've been looking at this planning idea for quite a while, but it was an announcement from the Premier of Ontario that they're going to do this for a couple of years and make sure the First Nations land use planning goes forward before anything really gets seriously looked at; they want to give it time for the First Nations land use plan to go forward, making a partnership type of relation going forward with the north. He didn't want to step over the line without us, thinking they can plan.

Now, we're doing this land use planning as fast as we can get step-by-step procedures to get to where we are going. There are a lot of scenarios coming our way to—even with the Premier's announcement, there are still a lot of scenarios to it. I think it should be a lot easier than it is because we're doing what he wanted to do. As far as the funding goes, it's very hard to make this thing go forward. I think it should be a lot easier than that since it's a political commitment from the leader of Ontario.

0930

On our First Nations side, if we do commit to something, we mean it. We don't just say things just to get ourselves put in the door. So we expect this thing to materialize because we want to work with, like we said, a true partnership with Ontario going into a wild, untouchable area. This is the last frontier for the resources of Ontario, and we've got to do it very carefully together. You can't just go there alone and do it. You're not familiar with what's up there. We know what's up there. So I expect we, in the First Nations, to be part of the whole development process going to the north because we know the area. If I wanted to do something in Toronto, I wouldn't be trying to do something over there, because I don't know anything about that city, but up there, I know everything. We don't want to be excluded from any kind of process that's going to go into Bill 191, the Far North Act.

The one thing I really appreciate about this consultation process and what's happening in the Far North Act is how First Nations community people were hired to do

that. It shouldn't be just the Ontario government senior officials doing it very carefully—because it's a serious business when we don't; it's not just something in everyday life if we want to go and open up something that's never been touched. We're not going to make the same mistake that we made in the past. We want to protect what's up there.

We're not against any development; we just want to do it right. We want to be part of economic development. We want to create our own First Nation economic policy for our own survival and our own land use planning. So we look at these things seriously. We're not just going to sit in reserves the way we were told by the federal government. We want to operate in our own territory like everybody else. I believe that we should go in together, into a very serious partnership, because our treaty and aboriginal rights are there. That's a very live document. It's recognized in the Canadian Constitution as part of the treaty implementation process. I think we should do it together very seriously. The treaty document is like a marriage document; sometimes something comes out like a divorce document. We don't want that. The process going north: I want to be there. It's not that we're rejecting anything seriously. We want to be part of every decision made along the way because there are things that are there, things that they don't know, maybe, and we can help. If we put things together, it's going to work better than it was before. Thank you very much.

Mr. Steve Winsor: Okay, so, just to reflect a little on what Wilfred just mentioned: The community is willing to take equal responsibility, both Cat Lake and Slate Falls, working with the Ontario government to make an environmentally sustainable land use plan. We definitely encourage open, ongoing, transparent dialogue throughout the whole process. We're very heavy on community and external consultation just to ensure that everyone is on board with what we're doing and so that any issues that are brought to the table are brought forward early so that we can continue on with our process and address issues as they come forward.

We are striving to reach consensus on decisions relating to the management of resources and lands. The Cat Lake and Slate Falls chief and council will endorse the land use plan, as well as the minister of Ontario will sign. The land use plan development will follow direction as provided through the community-based land use planning framework, which was originally developed in 2000 through the northern boreal initiative, which has now been absorbed into the Far North Act.

Finally, the land use plan will incorporate emerging direction from far north planning. For example, as this Far North Act materializes and the land use strategy for the far north is developed, we want to ensure that our land use plan—remains consistent with emerging direction from the far north to ensure that everything is consistent.

This is a little bit of our strategic action plan. It just outlines how we got started in 2000.

Mr. Wilfred Wesley: Yes, it started way back in 2000. I happened to be with a tribal council organization at the

time Lands for Life was in full swing. We looked at participating a little bit, for Lands for Life, at the time: a round table. Then it kind of wandered off from there to starting to see exactly what would transpire from the Lands for Life process. It didn't look too clear. The First Nations direction was kind of a dark shape for us, where we were going with Lands for Life. So we kind of developed something, the first at that time, a First Nations round table, something to discuss, further north [inaudible]. We're now in the Far North Act, so I guess that's just the way the thing is heading.

So we kind of struggled along there for quite a while, kind of fading out every now and then, and then we'd bring it back to the table again as a First Nation. We've got to get serious. Let's go forward, to see if we can make any headway going towards implementing our own land use planning and a partnership with MNR and many of the others; anyway, we want to be part of theirs—environmental people—just to go north and create some opportunities.

So this is where we're at now, this 2008-11 community land use planning. We did a lot of community open houses. We did them in Cat Lake and Slate and Sioux Lookout. We've done a lot of open houses. There's a lot of interest, people coming around, business people. They kind of like the idea, because they have a chance for input on any development processes that are going to be created. They have a little bit of a chance to have a say in it, rather than everything coming down from nowhere and they say, "You have to live with this." At least they're participating a little bit, in any way they can do it. That's a direction we're going for 2014. We hope to be in resource management planning at that time.

So when we look at the whole far north, when I look at the Far North Act, I think it sometimes—it affects me; it should be more like a special piece of legislation to accommodate two parties, rather than just Ontario legislating itself. Sometimes we do things to accommodate the two parties. As an example, when we built a hospital here in Sioux Lookout, there was a four-party agreement, so it became special legislation to accommodate the funding people and people who were going to get served at that thing—a four-party agreement. So the government agreed to make special legislation just to accommodate that process itself. It's almost the same scenario we want to have here, because it's the homeland of a lot of people up there. If you want to legislate that, it has to include these people. They already had an agreement, a treaty agreement, and they lived with that. It's recognized in the Constitution, like I said. That's where they can rise and build and implement their treaties and start their own economic provisions for their territory. A reserve is only a federal government-selected ground for the First Nations to stick around, more like political refugees in their own country.

That's where I'm at. I'm happy to see people here, finally coming to the far north, trying to create something that will work for everybody.

Thank you.

Mr. Steve Winsor: So, really, it started off in 2000, when an interest in forestry was originally started. Then there was an MOU signed between Cat Lake and Slate Falls First Nations with the Ontario government to pursue forest management opportunities as well as other resource-based interests.

As we move forward—we had an eight-year gap in which the communities were trying to build capacity in the communities' understanding of the land use planning, collecting aboriginal traditional knowledge and information about species-at-risk habitat. It was just an ongoing amount of internal information to try to collect to ensure that we have appropriate information available to make sustainable decisions.

In 2008, we adopted the community-based land use planning framework, and the rubber hit the road and we started off with an ambitious three-year planning process. We're at year two right now. We did have community open houses from December 1 to 3 as our first formal kickoff. We invited everyone from the public, environmental groups, government agencies, stakeholders and other First Nations communities.

0940

Our goal is that by 2011 we'll have our final plan completed and we'll be looking at getting environmental assessment coverage for forest management operations as well as a new vision for other interests such as the mineral sector, tourism, wind power, water power—renewable energy.

I won't get into too much detail on our planning team structure. All I really want to point out here is that our planning team structure is composed of Wilfred, the Cat Lake community representative; Gordon, the Slate Falls community representative; myself; and we have a consultant and two MNR far north planners, one in the Sioux Lookout district and one in the northwest region. We have an extensive advisory team, which changes as we go—and that could range from MNR, MNDR, Ontario Parks. We could have NAN, tribal councils and adjacent First Nation communities as advisory groups to feed into the process on an ongoing basis.

What's very crucial here are the arrows at the top where it has the chief and council of both communities and the direct relationship between the chief and council of both communities and the planning team itself. It's very key that Gordon, Wilfred and myself maintain ongoing dialogue ensuring that the chief and council are updated on our land use planning process and that the chief and council can flow concerns, issues and recommendations towards us as we're developing the plan. So if anything here, it's extensive dialogue, it's a community-based plan, it's community-based decisions, and we're doing it at the local level.

I mentioned a little bit of our planning process. It is a three-year planning process. The preparation phase was basically dealing with community consultation, adjacent community meetings, development of the terms of reference, identification of planning area boundaries, and true consensus development with ongoing consultation.

We go into phases two and three. This is where we have the information centres in Cat Lake, Slate Falls and Sioux Lookout. We had our terms of reference finalized, signed off by the minister, and signed off by the chiefs and councils of both communities. We developed a vision, goals, principles and objectives document to help guide our dealings, with protected area planning and identification of potential economic development opportunities.

And we have “Seek funding support”: You’re going to see “Seek funding support” on each one of these stages, and we’ll get to it, where there’s a reason.

Phase three, the current phase: We’re looking at a draft plan come December. We’re really ramping up on extreme amounts of internal community meetings, stakeholder meetings and planning team meetings. We’re looking at anywhere from a three-week to a four-week rotation for these meetings.

In the last three or four months, we’ve been looking at protected area design, trying to identify our protection priorities within the planning area, as well as looking at potential economic development opportunities by reviewing information that MNDM, MNR, tourism communities—everyone—brings forward, to help create different layers so that we can totally have all the information available to make a sustainable decision.

Our final stage will be a final plan, which will be December 2010. At that point, once our plan is approved, we’ll be looking at environmental assessment coverage as well at that time.

We’re going to talk a little bit about the support we’re getting from the governments, from other First Nations and the public. Wilfred and I had a little conversation about this last night, and Wilfred had the burning desire to speak a little bit about this one. I’ll help him out, but you go right ahead, Wilfred.

Mr. Wilfred Wesley: This is what was briefly mentioned in my first thing, the commitments that we share. Actually, we call it political commitments, because he’s the leader of Ontario, so I expect it’s going to go forwards and be implemented, whatever direction he’s directing the government to go, as well as the people in the far north—because the far north tells you where to go for economic development for our First Nations people.

In reality, I guess we don’t quite understand each other yet. But there will come such a time, when we’re dealing with one piece of area—we’re going to have to understand each other now from here on, because this is untouchable area for the First Nations territory. Now we’re going to be legislating it, so they have to understand where they’re going, what they are going to be dealing with and how they’re going to deal with it. It’s not going to be a process like in the past. This is going to be a little bit of a different approach if you’re dealing with somebody’s backyard here—it’s livelihood backyard, and we want to be part of the whole thing. By saying that, you see what we’re doing at the land use planning—trying to be part of the whole process. The planning area you see—it’s not blocking things out, it’s more like laying out

our expectations to work jointly with the Ontario government in different ways—wherever we’ll agree how he works. There’s a lot of things—he’s going to disagree how we work. We have to iron those out to come to a two-party process on the north.

That’s what I would say about the support—to support each other very well. It’s not just one process; it has to be a two-tiered process. I didn’t see much of that in the Far North Act.

One thing I see, there is discretion of the Lieutenant Governor—there’s no discretion of the First Nations in that section of the Far North Act. It should be pretty well mentioned in a law that they are part of the decision-making in their own backyard.

That’s all I’m going to say about this. Thank you.

Mr. Steve Winsor: So we do have strong support. Wherever we go—we talk to private industry, stakeholders, government agencies, adjacent First Nations, the internal community itself—there’s a strong, strong desire and support for a First Nations-led land use planning initiative within the community’s traditional territory.

The July 2008 Premier’s announcement was very important. It mentioned things like protection of 50% of the far north, and also Mining Act reform, which deals with improved community consultation efforts as well as withdrawing of culturally significant areas from mining activities—and it stresses no new economic development until community-based land use planning is complete. It talked about revenue benefits sharing. In a nutshell, it strengthens the requirement for meaningful First Nations consultation and engagement. The far north legislation came forward, and it’s a good tool. It’s a tool that we need to ensure that community-based land use planning initiatives are strengthened, supported. It does reinforce community-based plans; it provides a legislative commitment. It supports environmental protection and climate change mitigation, as do the communities themselves, as a part of their goals, visions, principles. It supports local-level planning, local-level decision-making, which influences the communities themselves. So it gives them control over responsibilities for their traditional territory, on where they do and where they do not want to see certain activities included.

But there are some issues. Even though we support the far north legislation, we believe some refining needs to occur to ensure that in the partnership between the communities and the Ontario government, everyone is comfortable and satisfied. There’s one section that we looked at and it comes to the—when it talks about approved community-based plans, it appears in the readings that we have done, in our interpretation, the minister may supersede land use planning boundaries, land use planning designations, within an approved plan. It seems like from the beginning everything has been told and preached as it’s a community-based plan where the communities now have decisions over what happens on their land base. I guess an easy way to explain it within the communities is that, “You’re now in the driver’s seat. You have the ability to say where you want certain things

to occur or not." But there's this caveat, it seems, in the act that mentions that the minister may supersede approved plans if the minister deems that it's in the best interests of Ontario. So that does leave a little bit of uncertainty, and it almost provides a backdoor exit to an approved community-based land use plan.

0950

Is there anything left to say there, Wilfred?

Mr. Wilfred Wesley: I guess, on one of the things that Steve just mentioned, make sure, if there's a back door, that everybody knows where the back door is.

I'm very concerned about this thing too. Like, the Far North Act—consultation was done, but I think it was not satisfactory. It was done too fast, and the people who did the consulting at that time, the First Nations people flying around in our area—it didn't look right, the First Nation to consult the First Nation. I think it should have been the middle-class bureaucrats of the Ontario government who did that bill, the administrative type of people, not the politicians, because they can explain things better. The bureaucrats explain things better because they work in the system. If the people come to Cat Lake a couple of hours and they're gone—it doesn't even sink in yet; they're gone—it's called consultation. I think the senior government officials should be the ones consulting the First Nations—be very careful how, though, with this Far North Act. Because it looked like it's the very least important, the way it's been done. It is a very important thing that we want, what they are doing, and I think we have to do a little better consulting.

The time they came to Cat Lake, I wasn't there; I was over here in Sioux Lookout. I didn't even know when they were coming. They had come and gone by the time—nobody knew what they were really doing. They go to the radio station and that's it; they're gone. It's a back door for them to train First Nations to become—the politicians sneak out the back door before the questions fly. So I think we need to do a little bit more consulting about this far north legislation, because once it's there, it's going to be there. So let's do it right.

I would say about 90% of the people don't really know what it is yet, and it's covering their territory. So I think we have to do it a few more times, to consult people, and we can get more information on how we can make some changes before this thing becomes a law itself.

That's it for me.

Mr. Steve Winsor: We only have one other slide here and we'll be wrapping this up. I know we're going a little overboard. But there's one more thing we want to mention about the far north legislation before we go to the next slide, and that's communities that have no approved community-based plan or aren't interested in pursuing community-based planning. I guess the way we understood it originally is that without community-based plans, there are no economic development opportunities. But as we read in the act, it seems to identify that for communities that do not want to partake in community-based planning, there is an option where the minister "may" work with the communities and, if deemed in the

best interests of Ontario, "may" enter into economic development arrangements without having a community-based plan in place.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Winsor, you have about a minute and a half left. Can you wrap up?

Mr. Steve Winsor: Okay. This is our biggest challenge, at the end here. The biggest problem here is, we've been doing this land use plan now for the last year and a couple of months, working with communities, trying to develop that capacity, that understanding, trying to get that traditional knowledge so that everyone can meaningfully participate and have a say in what the land use planning process will do for those communities, but it seems to be the funding is the issue. As we started this process, our funding proposals were basically a 10% to 20% community contribution. We've been in this process for over a year now. To date, the communities have been covering 80% of the cost. We have funding proposals that have been submitted for a year and two months. There's still no word back. The review process, the approval process, the payment process—it's ridiculous, it's unheard of, and there's no possible way that a community can do a successful land use plan without having appropriate resources, because we're not starting at square one; there's a lot of knowledge-based building having to occur within the communities.

Finally, we have reimbursement-type programs, where they say, "Here's \$100,000 to do caribou survey work that will benefit the province and the communities as a whole," yet funding doesn't come forward until it's over, so how are the communities supposed to gather this crucial information? They have no funding to start out and get things going.

It's a huge issue—a huge issue. Now the communities' land use plan is at risk because of a lack of government funding commitments that we require. We really ask, if something, if anything could happen, it's that the proper channels or avenues be taken to ensure that appropriate levels of funding are brought forward to the communities that are interested in community-based land use planning initiatives. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. You've left about three minutes for each party to ask questions, beginning with Mr. Bisson.

Mr. Gilles Bisson: You're pretty clear, because the issue really comes down to the issue of funding. If we believe in community land use plans and we want to make them happen from a public policy perspective, we need to be able to fund that to make it happen. I was going to ask questions on that, but you clarified that at the end.

The other question is, at the end of this process, when you're done, the protection of the land: Do you see it as, "I'm protecting the land here forever and ever," or is it a sort of living document in the sense that if values are found on the land, either mining values or whatever it might be, there's an ability to develop that in a sustainable way?

Mr. Steve Winsor: We're hoping to make as solid of a land use plan as possible, where the amendment process

and having to go back—we're hoping that we can get as much information now to have a clear, concise document. But yes, we're always, always going to be respecting and entertaining community values, if it's cultural sites, whatnot, to ensure that the community's traditional activities and the sacred spiritual sites are protected throughout the planning area. But in the community's perspective, for protection—well, they've been protecting it all along. A part of our protection area priorities discussion has to deal with different levels of protection and what it means. We have some areas identified as permanent protection zones around water quality, around traditional species at risk—some are calving habitat for woodland caribou, for example. So we are trying to make a concrete plan as we go through this and identify various levels of protection zones.

Right now in our land use plan, we're at about a 35% protection zone which can entertain various activities. In some protection zones, there's no development; in other protection zones, we have specific development that can occur; and then we have other zones that are a little more flexible, more general. But we're hoping through this process to have a solid plan that we won't have to go back to a lot and have to change anything, but we do understand that the amendment process is required, because there are things that you may not foresee 10 years down the road.

Mr. Wilfred Wesley: One of the things I like, this question—it is a living document. If something has to be developed in a way, we have to have First Nations and the Ontario government sit down together to make this thing change, not just the government itself, alone, changing it. You have to come down, have a discussion around if it's okay to change it. Two bodies change it. It's a living document, changeable. It would have to go that direction. What I'm saying is that we don't want—like, Ontario itself can change a lot of things in our plan without knowing it. It has to come to us, then we can change it together where we have to change it.

The Acting Chair (Mrs. Linda Jeffrey): On the government side, Mr. Mauro.

Mr. Bill Mauro: Steve and Wilfred, thank you for coming forward today. We appreciate your comments and we appreciate your express support for Bill 191, even though we acknowledge your comments around its requiring some refining. But we appreciate the position that's been taken publicly by Cat Lake and Slate Falls. So thank you for that.

1000

A couple of comments on the funding: We announced \$30 million over four years in the 2008 budget. Have you made application to that fund for that money?

Mr. Steve Winsor: We have made applications to the heritage fund. We have made applications to aboriginal affairs, the MNR, with CORDA. We have 10 proposals out there. It's just extensive.

Mr. Bill Mauro: How about on the \$9.5 million, the relationship fund through aboriginal affairs for community capacity building: Have you accessed any of that?

Mr. Steve Winsor: We have accessed that. They are basically the only funding agency that really came forward.

Mr. Bill Mauro: Okay. Is there any commercial forestry existing north—

Mr. Steve Winsor: No.

Mr. Bill Mauro:—exactly at this point? There was a comment made earlier in your presentation about this gap, an implication perhaps left with people not familiar with what's going on, and that perhaps this is preventing something from occurring. In fact, there has never been any commercial forestry that existed heretofore in the far north, and I think it's important that we get that on the record.

The Pikangikum plan that's been in place and approved since 2006: Did you have any involvement with that? Were you associated with it in any respect?

Mr. Steve Winsor: No, I have not.

Mr. Bill Mauro: Can you talk to me a little bit about that process that obviously has been successful and how you think what we're putting forward as a framework is going to facilitate the same kind of result for First Nation communities on a go-forward basis?

Mr. Steve Winsor: Wilfred and Gordon, before I got hired on here, have been involved in this for a few years and they've dealt with Pikangikum and had several meetings just on boundaries, adjacent community discussions and whatnot. I think the biggest concern, in order to make a land use plan successful, is to streamline funding to ensure that the communities can stay on track with their land use planning initiatives. As we've seen in the past plans—start, stall, various agencies, various donors, various reasons, projects. In order to have a successful land use plan, you must continually stay true, stay online and continually have an internal consultation with your communities to ensure that they're understanding all the government policies and exactly what community-based planning can do for them.

Mr. Bill Mauro: So as an idea—

The Acting Chair (Mrs. Linda Jeffrey): It's going to have to be a really short answer.

Mr. Bill Mauro:—or as a concept, then, I suspect that you favour this legislation in terms of its ability to provide certainty for both First Nations and industry on a go-forward basis?

Mr. Steve Winsor: Exactly.

Mr. Bill Mauro: Okay. Thank you.

Mr. Steve Winsor: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. A couple of questions regarding the size of the land use planning area: I spent some time on the land there and a number of areas, and I see that down in the bottom southeast corner, some of the land actually goes in areas where I know individuals on the new Osnaburgh reserve have used that land. How did you determine the boundaries for your land use planning area?

Mr. Steve Winsor: It was largely to do with trap lands. What happened was—Wilfred can speak more about the relationship between Mish, Cat Lake and Slate Falls. There are very close family ties. Would you like to talk a little bit about that, Wilfred, or do you want me to go?

Mr. Wilfred Wesley: When it came around, I was a chief at the time we designed it. There were all these trap lands that—before they were trap lands, they were traditional territory where everybody was living, everybody was born. Ginoogaming came and issued trapline licences. That's the area of what we show here, Cat Lake trap land areas. It was traditional territory on Cat Lake. Cat Lake itself is just a community where we'd meet before, but they originally lived in the area trap lands. So then they squared a little kilometre for each family, and then that's their traditional territory. One of the things, why it's so strong under the trap land—you get involved with other cases in other provinces. The First Nations took some of the challenges in the courts of all their traditional territory and treaty and aboriginal rights. The First Nations never lost their sovereignty over the land; they are part of the land. You can't just treat them like any other people. They are part of the land. Fortunately, they never lost their sovereignty over the land; they belong there. They don't feel at home in the reserve; they feel at home where they were before. So that's what makes it so important that we select the land like that: It was a traditional territory.

Mr. Jerry J. Ouellette: Yes. I know in New Osnaburgh, the First Nation community there was right on—

Mr. Wilfred Wesley: Yes, they're connected to ours.

Mr. Jerry J. Ouellette: Yes, they were using quite a bit of the land at the west end of Lake St. Joseph, where I've been on. I think that it probably comes down there because of the trading post that was established there by Hudson's Bay when it first started.

But how do you decide, between New Osnaburgh and there, which one is going to be your part of that part? Because I know they were moose hunting and caribou hunting in the area that you have shown in your planning area.

Mr. Wilfred Wesley: It's just part of any agreement. When they want to hunt there they let us know, or they come and—sometimes, they go sturgeon fishing inside our planning area. It's all an agreement with a communication with the other First Nations communities.

Mr. Steve Winsor: We have several agreements. The way it is is, Cat Lake and Slate Falls have Osnaburgh trappers on their lines and vice versa as helpers and what-not. So there is a strong community tie.

We met with their land use planning group and their trappers, and basically, the big thing was the traditional activities of trapping. They can continue—there's not an issue with that; it's more just about defining an area. They have areas on their land use plan that are Cat and Slate traplines, and we have some of theirs, but we adjusted boundaries and we came to a mutual agreement that traditional activities for both communities will con-

tinue and we will address economic development and protection priorities on a case-by-case basis as we move forward.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, gentlemen. Your time has expired. We appreciate you being here.

Mr. Steve Winsor: Sorry about that. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): No, it was very interesting. Thank you very much for being here.

I'm going to go back to our original agenda. Is somebody here from the Boreal Prospectors Association? No? If you're not here, we're going to move on to the next person.

CONGRESS OF ABORIGINAL PEOPLES

The Acting Chair (Mrs. Linda Jeffrey): Is there somebody here from the Congress of Aboriginal Peoples? Would Chief Kevin Daniels be here? Welcome. As you get yourself settled, if I could give you an idea of how this is going to proceed—

Chief Kevin Daniels: Just one moment, please. I can't hear through this.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Can you hear me now? Great. If I could just give you the preamble. My name is Linda Jeffrey. I'm the Chair. You're going to have 15 minutes. When you get close to the 15 minutes I'll give you a one-minute warning, and after that we'll be able to ask questions. When you're ready to begin, if you could state your name and the organization you speak for. You can begin whenever you're ready.

Chief Kevin Daniels: Good morning. Madam Chair, members of the standing committee and observers, it's an honour to be here today in Sioux Lookout on the traditional territory of the Anishnawbe and Metis peoples. My name is Kevin Daniels. I am the national chief of the Congress of Aboriginal Peoples. The Congress of Aboriginal Peoples is one of the five national aboriginal organizations in Canada. We represent non-status Indians living off the reserve with Metis peoples.

We were founded in 1971 as the Native Council of Canada and were involved in the 1982 constitutional negotiations and in many cases that have been before the Supreme Court of Canada.

I've come here today in support of the Ontario Coalition of Aboriginal People. We do not intend to stand aside when it comes to the rights and interests of our constituencies. These bills before us today will have an impact on our constituency in Ontario. You're already well aware that this is a trigger of the crown's duty to consult. I would like to point out to the committee that the Congress of Aboriginal Peoples has received no capacity funding to be engaged in these issues. It is important that aboriginal peoples have the capacity and resources to participate. The crown has obligations, and these obligations are entrenched in the honour of the crown.

1010

In regards to Bill 173, the Mining Amendment Act, we recognize the importance of mining to the economy of Ontario, and we recognize Bill 173 as an important first step in modernizing the act. But from the onset of this work, it was clear to participants that the crown has obligations to aboriginal peoples and that there are aboriginal rights and interests related to mining development. What is less clear is the recognition that this obligation is greater than consulting with Indian Act reserves.

We are pleased that the old free-entry model has gone, since it was directly responsible for many controversial operations on traditional aboriginal territories. In many ways, it is symbolic of the end of the frontier mentality, which has been responsible for so much harm to aboriginal peoples.

The Congress of Aboriginal Peoples supports an approach to land use planning in the far north that recognizes the interests of all aboriginal peoples. We want to be involved in land use planning processes and have the capacity to be involved. Aboriginal peoples need to be involved in the determination of what "protection" means and the setting of economic and conservation objectives.

I've read through the testimony of several witnesses to this committee. It is truly remarkable to see the lack of understanding of who the aboriginal peoples of Canada are. The term "First Nations" is used over and over by witness after witness with the mistaken view that the term means the same as "aboriginal peoples." The aboriginal peoples of Canada are described in section 35(2) as the Indian, the Metis and the Inuit peoples.

The bill needs work to be respectful of established aboriginal consultation and accommodation requirements that have been set out by the Supreme Court of Canada. Consultation needs to be done properly. The crown must discharge its duty to consult, and this means being inclusive of all aboriginal interests, including status and non-status Indians and Metis peoples living off the reserves.

We are very concerned about Bill 191, the Far North Act, 2009, and the impact it will have on future generations, and with the lack of consultation or accommodation for aboriginal peoples. We understand that this proposed legislation will put in place the formal process to allow economic development to occur in the far north of Ontario. We are not opposed to economic development, and recognize the benefits it can bring. We also understand the needs of business to have certainty.

Our interests are clear: We want to be fully engaged in any land use planning process. The Metis, status and non-status Indians need to be involved in the development of the far north land use strategy. We also need to be involved in the land use planning exercises.

Everyone at this committee recognizes that most of the problems will arise in the traditional territories of aboriginal peoples. These traditional territories are shared areas among Metis, status Indians on and off reserve, and non-status Indians.

Dispute resolution is the biggest issue connected to the Mining Amendment Act from the aboriginal point of view. The question is, who will fund this process? I think that this should be funded by the proponent. Aboriginal peoples involved in a dispute resolution process need to have access to lawyers. If a tribunal is established under section 170.1, then this tribunal needs to have someone on it who is from our constituency.

Through these committee hearings, I have been surprised at the attacks on Ontario's Endangered Species Act. This is an issue in which the Congress of Aboriginal Peoples has played a major role at the federal level. The federal Species at Risk Act and the Ontario act are vital to the protection of our natural world and fulfilling our obligations under the UN Convention on Biological Diversity. Both the CBD and SARA have specific wording to ensure the inclusion of aboriginal peoples in initiatives. When this committee is speaking about aboriginal peoples of Ontario, it needs to be clear that you are referring to section 35.2 of the Canadian Constitution. The term "First Nations" is a vague term and in federal legislation it refers to Indian Act reserves. So when this committee is speaking about opportunities for First Nations, it needs to be inclusive and say "opportunities for aboriginal peoples."

Much of how this process will work will be covered in the regulatory process. This raises many questions for us, since it is in the regulations where many difficult decisions will be made that will affect our rights and interests.

As we sit at this committee hearing, mining companies are undertaking exploration of our traditional lands without any consultation. So we are left with the important questions of our involvement in the development of the regulations:

(1) How will this be done?

(2) What capacity will we have to be involved?

(3) Will we have access to independent legal counsel to ensure protection of our consultation, accommodation and free, prior and informed consent?

We know there will be conflict over our traditional lands. I'm not overly optimistic about the future because of the amount of struggle that will need to take place in the courts. We are concerned with the high degree of ministerial discretion in Bill 173. We know from experience that this spells trouble for aboriginal interests. We recognize that mining and mineral exploration can bring employment. It can bring jobs and training, but our elders have warned us about the impacts on the environment.

I want to remind this committee of the words of Chief Seattle, that the earth is our mother. We are part of the earth and it is a part of us. This we know. The earth does not belong to us; we belong to the earth.

Thank you for the time that you have given us here today. So if you have any questions, I'd be happy to answer them.

The Acting Chair (Mrs. Linda Jeffrey): We have about three and a half minutes for each party to ask questions, beginning with Mr. Mauro.

Mr. Bill Mauro: Chief Daniels, thank you very much for your presentation. I wanted to just mention to you: You were speaking a bit to both pieces of legislation, but you spoke a bit about the duty to consult. In Bill 191, at least, I wanted to just read for you—I'm not sure if you had a chance to look at the legislation, but section 3 of the bill is titled "Interpretation," and it reads, "This act shall be interpreted in a manner that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult." I thought it important, if you weren't aware of that, that I mention it to you.

In terms of the consultation, you also spoke about consultation a little bit. There are a number of—first of all, I meant to mention with the last deputant, this is first reading of this legislation. It's quite unusual for legislation to be out for public consultation after first reading, so what we're doing here today—over the course of this week, actually—is quite unusual and, we feel, significant. We think it speaks to the importance and recognition, by our side anyway, that these two pieces of legislation really do prefer and need extensive consultation.

I was going to ask you, though, in your capacity as chief of the Congress of Aboriginal Peoples: Do you have direct relationships with the individual First Nation communities in Ontario in terms of the consultations, the outreach sessions that are going on beyond the consultation that we're doing here today as we travel around the province? For example, there have been outreach sessions with Mattawa, with Fort Albany, with KI, with Webequie, with Marten Falls. Does your organization tie into them? Do you have any work that you do with them? Are you part of those outreach sessions?

1020

Chief Kevin Daniels: We have a provincial territorial organization here in Ontario known as the Ontario Coalition of Aboriginal People and you'll be hearing from them probably right after me, but we hope to continue to be involved in consulting with other aboriginal groups. Again, resources are a very key component for us to communicate and sit down with the leadership of these particular areas, and I hope we're able to do that, to come to some kind of consensus that we can actually bring back to the table and begin further discussions with this committee. I don't know how long this committee is going to be in existence for us to do that, but again, from what I understand, a lot of the First Nations are not here, are not going to be presenting because they are involved in their own leadership selections and what have you, the elections going on throughout northern Ontario. A lot of the leadership is left out right now from being part of these negotiations, so I think that we really need to ensure that all our aboriginal peoples have the opportunity to come to the table to give views.

Mr. Bill Mauro: Well, just in terms of your question about the length of time, there has been a letter sent to Grand Chief Stan Beardy of NAN advising him of the intention of the minister to work with the House leaders in the Legislature to try and ensure that there is further consultation on Bill 191 after second reading.

Chief Kevin Daniels: That's great. I'm sure they appreciate that.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Hillier.

Mr. Randy Hillier: I just wanted to have a little clarification during your presentation. We talk about both Bill 173 and Bill 191 here. They are linked and they're obviously going to become more linked with time. The duty to consult and the development of the land use plans: Are you suggesting that all aboriginals who are not in those areas or not in those communities should also be participating in the development of land use plans?

Chief Kevin Daniels: I think the provincial and national leadership of our off-reserve aboriginal organization should be a part, yes.

Mr. Randy Hillier: So the organization should be party to, for example, the Cat Lake or Slate Falls land use planning development as well?

Chief Kevin Daniels: I think all mining development, no matter where it takes place in Canada, affects all human beings, and as human beings we are being affected by it, so we want to be part of those—

Mr. Randy Hillier: Yes. I'm just wondering how in practical terms we'd actually accomplish something like that when we're looking to develop those community plans, because the people who are there and have had the greatest consequence to the actions that happen in those communities—how that's going to fit.

But I also want to ask you about the Premier's announcement that 50% of the land will be protected. We've heard from different delegations, and of course we don't know exactly which 50% is going to be protected but we know it's an edict now that half of those lands will be protected. But we don't know what is actually underneath those lands, we don't know the value, we don't know what technology is going to come along or what minerals we may find down the road. They may all be lost forever under that protected idea. Also, as we've heard from others, the length of time to develop a community-based plan that we've seen from an earlier presenter today will be at least three years and there was a number of years just in the pre-planning. Do you see that as a significant difficulty or hardship for the people of the north, being deprived of economic development when that amount of time must pass before we can make a decision? I don't know what the amendment process is going to be, how long it will take the minister to approve an amendment to a community-based plan afterwards because, again, there is no uncertainty about this: It does require ministerial approval. What are your comments on just how that's going to affect people of the north for economic development and prosperity?

Chief Kevin Daniels: Like I mentioned in my presentation, we're not against economic development. What we are really concerned about is the environment and the effect it's going to have on the people within the immediate area. Sure; yes, there are different kinds of mining and developments that are good for the environment, and then there are others that will completely

destroy and kill off the future of any aboriginal peoples living in that area. That's what we're concerned about and that's why we want to know exactly what's going to take place in the far north, and we want to be part of whether those developments will or will not go ahead. We want to see first-hand what benefits it will have for the aboriginal people of those northern regions.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Bisson.

Mr. Gilles Bisson: I was interested in your comments around the dispute resolutions mechanism. You're right when you say we don't have the capacity in many of our First Nation organizations to be able to do the work that needs to be done to work towards some sort of agreement. But, in your comments, you said that you favour the proponents being responsible to pay, and I just wonder how that squares against what has been the position of most First Nations, which is, it's the crown's duty to consult. If you, all of a sudden, say in a bill from the crown, "Well, we're going to give this to the private sector"—mining company, forest company, whatever—isn't that a delineation of the duty of the crown?

Chief Kevin Daniels: If the proponents are going to actually go in and destroy the earth, then I think they should pay and the crown should equally pay for engaging the aboriginal peoples there in those communities and here in the province of Ontario. I think it's actually a 50-50 chance for both sides to provide the resources to the aboriginal peoples of Ontario for being involved and being engaged in discussions and the type of mining that's going to go on.

Mr. Gilles Bisson: Can I propose a model and get your sense if it works or doesn't work? Let's talk about mining in perspective. The first part is to stake a claim and to get the legal right to be able to do exploration. That's the first point of conflict: Who should be responsible to pay to deal with that conflict? It's my view that the crown should have the responsibility to pay for that and then, if there is a mine to be found, what you do is, at that point, you get into the revenue-sharing issue, which allows the mine to pay either by way of royalties that would normally be paid to the crown—or the room on municipal taxes if they don't exist because there are not any municipality jobs etc. I would much rather see a system where the crown does not abstain or take away from its duty to consult by providing funding to the First Nation organization to deal with disputes, but then have a mechanism to make sure that there is a revenue-sharing at the end. Your comments on that?

Chief Kevin Daniels: Again, as long as it's aboriginal peoples and not First Nations—and I think we could all probably come to some consensus on how that model will be worked out. The doors are open.

Mr. Gilles Bisson: Do you have a lot of knowledge in regards to map staking versus staking?

Chief Kevin Daniels: No, I don't.

Mr. Gilles Bisson: Okay. So I won't go down that road. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much, Chief, thank you for being here today.

Chief Kevin Daniels: Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): I'm going to do one more call out to the Boreal Prospectors Association. Anybody here from that organization? Mr. David Gordon? Going once, going twice.

1030

ONTARIO COALITION OF ABORIGINAL PEOPLE

The Acting Chair (Mrs. Linda Jeffrey): I'm going to go now to our last delegation of the morning, the Ontario Coalition of Aboriginal People. Their president, I believe, is here.

Good morning, and welcome. Thank you for being here. If you could state your name for Hansard and the organization you speak for. You'll have 15 minutes. I will give you a one-minute warning as you get close to the end. You can start whenever you're ready.

Mr. Brad Maggrah: Okay. I don't think it will take me that long.

First of all, good morning, Madam Chairperson, members of the standing committee and observers. It's a great honour to be here in Sioux Lookout. This is part of my traditional territory.

My name is Brad Maggrah. I'm the president of the Ontario Coalition of Aboriginal People, which represents the rights and interests of the Metis, non-status and status off-reserve.

I'd like to thank the committee for travelling to Sioux Lookout to meet with us. Co-operation must be the cornerstone for partnerships between Ontario and aboriginal peoples. This requires an honourable process and respect for the requirements for consultations, accommodations, justifications and the consent of aboriginal people. Upholding the honour of the crown is always at stake when the crown is dealing with aboriginal people. The duty to consult is with the aboriginal people, not just with the Indian Act reserves. It's very clear there is a requirement for the Ontario government to consult with aboriginal people in regard to these bills.

I read the remarks of Minister Gravelle when the mining act was introduced in April. He stated that the government's proposal reflected the input of all major aboriginal organizations. I want to be on record as stating that no consultations took place with the Ontario Coalition of Aboriginal People.

The Ontario government must open the doors to consultations for Indians on and off-reserve and the Metis to ensure the transparency and legitimacy of this process. We want to be engaged in a mutual and respectful dialogue in Ontario. To date, we have received no funding or support from this province and we have not been involved in the drafting of the legislation and the crown has not respected our interests.

The great Metis leader Harry Daniels referred to our constituency as the forgotten people. We do not intend to be forgotten and we are committed to fight for our interests and rights.

The two bills we are commenting on require legal analysis and comment from our constituency. OCAP does not have the resources or the capacity to engage in such a process. Ontario has made no effort to assist us and has chosen the old ways of doing business with the aboriginal people. Finally, we had no opportunity to receive input from our elders on these proposed pieces of legislation.

The Far North Act, Bill 191, in our view, discriminates against the Metis, non-status and status living off-reserve. In the section "Interpretation and application," it states that "band" and "reserve" have the same meaning as in the Indian Act. It also states that "First Nation" means an Indian Act band. This is not our view of the First Nations, nor was it the view of the Royal Commission on Aboriginal Peoples. It made clear that there are 60 to 80 First Nations in Canada—Cree, Ojibwa, Blackfoot etc. This is very different from the idea of 551 Indian Act bands. This provides a significant role for the Indian Act reserves and land use processes in the far north. There is no reference to Metis, non-status or status off-reserve. This barefaced discrimination against our people will result in more conflict and legal disputes.

The Supreme Court of Canada has asked governments and aboriginal people to settle consultation issues by negotiations. Why does Ontario continue to act as if Metis, status and non-status Indians do not exist? We sat at the Constitution table in 1982 and we have been in the Supreme Court of Canada on several cases, yet Ontario remains blind to us.

OCAP supports the intent of Bill 191 to protect lands in the north but we want to be part of the process in identifying these areas and their management. OCAP supports Bill 191 provisions for both economic development and conservation measures being passed through community initiatives and land use plans consistent with the regional land use strategy. The proposed legislation is silent on our role in developing these plans and strategies.

The bill needs to be referenced to the aboriginal people in Canada, not just the Indian Act reserves. The text needs to clearly set out that we will be provided with resources to be able to continue to engage in this process.

When Premier McGuinty established his far north advisory council, there was no involvement of our constituency. In fact, there is no aboriginal representation on this council. On the website, it states that the council will provide the Nishnawbe Aski Nation with input and advice related to far north planning, but it fell silent on our constituency.

This bill needs to be amended to accommodate status and non-status Indians living off-reserve. We are prepared to work with you on the clause-by-clause amendment, but we need the resources to participate.

On Bill 173, we realize that Bill 173 is at its second reading and this is our only opportunity to make comments and advice on these amendments. The crown has a duty to consult and accommodate for aboriginal and treaty rights. Aboriginal and treaty rights do not end at the Indian Act reserve boundaries—and we are talking about aboriginal rights.

We agree with the Ontario Bar Association that the dispute resolution arrangements in section 170.1 of this bill are too vague and controversial. We agree with them that having a ministry of the crown decide on the structure or dispute resolution is unacceptable. The dispute resolution arrangement must be made to reflect the bilateral nature of this relationship and not the 19th-century view of the crown. Any tribunal set up under this dispute resolution regime must be inclusive of our constituency.

Thank you and meegwetch. If there are any questions, feel free to ask.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about four minutes for each party to ask questions. Mr. Ouellette?

Mr. Jerry J. Ouellette: Do you have any amendments prepared for Bill 191 as yet?

Mr. Brad Maggrah: No, we don't. We were left right out of this whole consultation process, so we are just starting to work on them. We don't have the resources to do anything on it, but my main concern here is why, when you're consulting with aboriginal people—there are 356,000 aboriginal people in Ontario; 80% live off-reserve. I don't feel that those people living off-reserve had any consultation at all—and they do have ties to their traditional lands. Even though they might live off-reserve, they do belong to a reserve at some point or somewhere.

Mr. Jerry J. Ouellette: I think the Powley case out of Sault Ste. Marie certainly indicated that, and a lot of support for that position as well. I know the Ministry of Natural Resources changed the moose tag allocation based on the outcome of the Powley case and reduced the number of the tags to ensure that the Metis community was taken care of in a number of different areas.

Mr. Brad Maggrah: When you're talking about allocations of Metis tags, they only do that for the Metis Nation of Ontario. Not all Metis belong to the Metis Nation of Ontario, and that's another thing that's not—

Mr. Jerry J. Ouellette: That was what my question was going to be. There are a number of Metis organizations in the province. Are you familiar and is there an official association between them all, and do you represent them all?

Mr. Brad Maggrah: No, we don't represent them all. To my knowledge, there are only two organizations in Ontario. One's the Metis Nation of Ontario and the other is the Ontario Coalition of Aboriginal People.

Mr. Jerry J. Ouellette: I believe there's another one in the Ottawa district as well.

Mr. Brad Maggrah: It's not a provincial organization; I think it's just—it could be just a town or something.

Mr. Jerry J. Ouellette: On the planning, then, when you're dealing with a lot of the Metis communities—for example, the previous presenter showed us a planning area for a rather large area. Do you believe that the Metis community should be involved in that or, as in the Powley case, do they need to ensure that there is an affiliation with the community?

Mr. Brad Maggrah: No, I would say we would want to be—for instance, my reserve is from Wabigoon Lake. I would expect to be notified of the consultations taken out on that reserve so that I might partake in them and have my views known. The whole point I'm making here is that there are no consultations going on with the people living off-reserve. They don't have any idea what's going on. I would like to make sure that we are part of the process.

Mr. Jerry J. Ouellette: My family has Metis status, so my sisters and my father and my cousins all have their cards; I just haven't sent in my birth certificate. I'm very well aware the community is growing in strength and gaining an understanding of what took place in the Canada Act under section 82 and the implications. This will have a strong indication as well as the potential for outreach to the Metis nation.

Thank you for your presentation. I don't know if Mr. Hillier has any questions, though.

1040

Mr. Brad Maggrah: Just one—we represent the non-status Indians also, besides the Metis. That's the difference between the Metis Nation of Ontario and ourselves. The Metis Nation of Ontario is made specifically; we represent the off-reserve Indians too.

Mr. Jerry J. Ouellette: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: One of the things that you're asking for is some form—there are a couple of amendments. One is, under the dispute resolution, you want to have some mechanism in the act that would give standing for an off-reserve First Nations person, either Metis or status or non-status, to be able to intervene in a dispute. I'm just wondering, how would that work? I'm just trying to get my head around it. For example, there's a project up in Pikangikum, and somebody who lives in Thunder Bay or maybe even Timmins has a problem with that particular project: What should be the litmus test in order to allow them to have standing to intervene, just a right as a citizen, or would they have to have some sort of tie to that land?

Mr. Brad Maggrah: I would say they would have to have a tie to that particular territory.

Mr. Gilles Bisson: Okay. Have you given any thought to an amendment that would make that happen?

Mr. Brad Maggrah: No, we don't have any amendment at this time. We don't have the capacity to work on any because, like the previous speaker said, we haven't gotten funded by anybody. We haven't had consultations done with the government to really understand the whole act as it's presented. We read it on the Internet as well as in the handouts we've been given, but we had no consultations taken at all with our constituency.

Mr. Gilles Bisson: And on the issue of consultation, there's nothing in the act currently that gives you any kind of standing as a national organization to be involved in the land use planning. So my question becomes, if you were given that, it would be for each of the individual land use plans. There would be an opportunity for your

organization and such organizations to participate, and then it would be up to you to decide, "I want to or I don't want to; we have an interest or we don't" in that particular land use plan?

Mr. Brad Maggrah: First of all, we're not a national organization; we're a provincial organization. Our national organization was the previous speaker, the Congress of Aboriginal Peoples.

Mr. Gilles Bisson: I was lumping you both in, because you're both asking the same thing: that you be given the opportunity to participate in land use planning. Land use planning is not going to be one big process; it's going to be a whole bunch of smaller ones. The question is, if it's written into the legislation that you have standing, that you have an ability to participate in land use planning, would you have to then have somebody at every table or would you just choose which tables that you're interested in when it comes to land use planning?

Mr. Brad Maggrah: We'd like to have the opportunity to choose the tables we'd be interested in.

Mr. Gilles Bisson: Okay. All right. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. From the government side, Mr. Mauro.

Mr. Bill Mauro: Thank you, Madam Chair. Mr. Maggrah, thank you very much for your presentation. We appreciate it.

Actually, the question I had, which I was interested in asking, Mr. Bisson has asked, in terms of how you envision this intervenor status for off-reserve or non-status people. So I appreciate your response to that.

I just will mention as well—I'm not sure if you heard earlier—in terms of the consultation piece, this is first reading of this legislation only. It's quite unusual for there to be a consultation after first reading. We will be moving forward with the request that will require the co-operation of the other parties and hopefully there will be a second round of consultation after second reading on Bill 191. This is second reading of Bill 173, so there may be another opportunity for you and your organization to speak to this, going forward.

Thank you very much.

Mr. Brad Maggrah: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Any other questions? No? Thank you very much for being here today.

Mr. Brad Maggrah: Thank you for inviting me here.

The Acting Chair (Mrs. Linda Jeffrey): Is anybody here from the Boreal Prospectors Association? Is Mr. David Gordon here today? No? Okay.

We have two slots that have not been filled. Is there anybody here who would like to speak to either piece of legislation who hasn't spoken this morning, who isn't a ministry person? We have a fair number of staff.

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): No, no. Is there anybody who would like to speak? This is an opportunity for you to speak if you haven't spoken and you'd like to step forward. I don't see any. Okay, that concludes our deputations.

COMMITTEE BUSINESS

The Acting Chair (Mrs. Linda Jeffrey): Is there any other business? Ms. Mitchell.

Mrs. Carol Mitchell: I wanted to put forward that September 14 be the clause-by-clause date and September 7 be the submission deadline.

Mr. Gilles Bisson: For which bill?

Mrs. Carol Mitchell: For both, just so that we can move the process forward. You've heard the government's discussions on the bills.

The Clerk of the Committee (Mr. Trevor Day): September 14?

Mrs. Carol Mitchell: Correct.

The Acting Chair (Mrs. Linda Jeffrey): Would you just run over that again so everybody can hear it?

Mrs. Carol Mitchell: September 14, clause-by-clause.

The Acting Chair (Mrs. Linda Jeffrey): For both bills.

Mrs. Carol Mitchell: Both. And that September 7 be the deadline for amendments.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: Whoa. The House is returning when? I should know, and I don't.

The Acting Chair (Mrs. Linda Jeffrey): The 14th.

Mrs. Carol Mitchell: That day.

Mr. Gilles Bisson: First of all, to expect deputation to be able to provide us with their feedback when it comes to amendments and us to have the ability to put them together and to present them by the 7th is a pretty short timeline. You have until mid-December to get the legislation passed. I would ask for a bit of co-operation in pushing back the time for clause-by-clause and the amendments so that we have proper time to do the amendments. We're just going to be compiling all of the information that we've got at the end of this week. We've got to sit down with our research departments. We're going to have to get back to some of these deputation. Expecting to have that happen by September 7 I think is a bit ambitious, to say the least. So I would ask for some co-operation in moving clause-by-clause to a reasonable time after the 7th, a week after the House is back at the very earliest.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: The difficulty I have is that I'm on public accounts at the same time, and that committee is in session then and we won't be back until the following week, which would make it very difficult—I wouldn't be able to be here, because I already have this commitment to be with public accounts at that time.

The Acting Chair (Mrs. Linda Jeffrey): Further discussion? Ms. Mitchell.

Mrs. Carol Mitchell: This is a date that has been raised for months now, right? It began in June, when we talked about these dates. We've been trying to get a date for some time now, and the dates have not changed. These are the dates that were put forward back then.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: I don't want to start an argument and a fight in front of our friends here, but if you want a fight, I'll give you one. Listen, these are two significant pieces of legislation. By the end of this week, we'll finish hearing from those deputation who want to come before us. It's going to take us a while to pull all these amendments together. The House is returning on the 14th. At the very least, the deadline for the submissions should be a week after the House comes back on the Thursday. That way, it gives us an opportunity to at least sit down with the research and legislative staff to draft the amendments. Asking us to draft amendments by the 7th is a bit overwhelming, and I think if you go down that route, it's going to send one hell of a signal to the deputation that you're not really listening and don't want to hear real, meaningful amendments.

The Acting Chair (Mrs. Linda Jeffrey): Further debate?

Mrs. Carol Mitchell: I just want to reinforce what I said before. These are the same dates that were brought forward in June when this process began. You have heard clearly from the minister; you have heard from the members the discussion about first reading and second reading and the need for further consultation. That has been a clear and concise conversation from the government. We have not changed the dates; the dates were brought forward then. We need to move forward into second reading to allow the process to evolve. That's what we're hearing clearly and that's what we've made a commitment to. These dates are the same as the ones that were put forward two months ago.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: First of all, for those people who are watching and those people listening on the radio, the government will bring Bill 171 back in for clause-by-clause and have passage by sometime in December. It is not pivotal for them to have the amendments by the beginning of September. The difficulty is, it's a fairly complex piece of legislation. There are some meaningful amendments that need to be made to this legislation. It's going to take a fair amount of dialogue for ourselves, and I imagine for the Conservatives as well, with the stakeholders on this legislation to prepare amendments that allow this bill to do what the government wants in the end. Asking us to get this in on September 7 is basically saying that at the end of the day we're not going to really listen to what the public had to say.

I don't understand why it is a difficulty to wait until the week after the House gets back. This bill won't even be scheduled for third reading until sometime in October or November, so you have enough time to do committee. Clause-by-clause is a day or two at the most. I can imagine that we would have no difficulty doing a clause-by-clause at the end of September, beginning of October, and you're still going to get your bill, but at least the opposition is going to have an opportunity to put forward reasoned amendments based on what we've heard. Doing this on the 7th, I think, is a slap in the face to all of those people who have come here to present.

1050

Mrs. Carol Mitchell: Oh, come on, Gilles.

Mr. Gilles Bisson: Well, listen. You're coming here and you're saying that you put this on the table last spring. We told you last spring, "No."

When you go out and consult on a bill like this, you have to have the proper time in order to engage in the drafting of amendments. It's not unreasonable—and it's what we've done in most other cases—to allow the House to go back, give ourselves a bit of time to deal with staff so that we can draft up the amendments and do the consultation, and then you have a decision at clause-by-clause. But to take away the ability for the opposition to prepare those amendments in a way that makes some sense, in consultation with both the assembly staff and with the stakeholders, I think is preposterous. I think it's just more of what we've been hearing around the consultation to this bill. There is no consultation.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier?

Mr. Randy Hillier: I have to agree completely with Gilles. This bill is too important to be rushing forward.

As far as the assertion that these dates have been promoted since June, people have gone to quite significant lengths to be here, to give their thoughts and opinions to this committee so that we can indeed—everybody has talked about making sure that this bill is done right. You can't do things right if you don't allow for adequate time for the people involved to provide that information back to the opposition so that we can propose thoughtful, important, reasonable amendments.

To suggest that on the first day of the House coming back we're going to have this all done is just ridiculous. Let's afford democracy a little bit of time, to be thoughtful and to be sensible and to get good results in it.

The Acting Chair (Mrs. Linda Jeffrey): Further debate? Ms. Mitchell.

Mrs. Carol Mitchell: Just a comment: It's five weeks from now. We clearly have heard, and it has been clearly stated, that this is first reading on Bill 191. You've heard—

Mr. Gilles Bisson: I'm not talking about 191.

Mrs. Carol Mitchell: No, but you're combining the two—

The Acting Chair (Mrs. Linda Jeffrey): Can I ask that one person speak at a time?

Mrs. Carol Mitchell: You're combining the two and doing that with intent to confuse.

This is a process that we feel is allowing for consultation at first reading and will allow for further consultation down the road. We're doing this because of the strength of this legislation coming forward. We know how important it is to the communities. We're out listening at first reading, and there will be an opportunity down the road, but that opportunity will be there if we can continue to move this process forward. That's why I'm putting the dates forward as September 14, with completion for submissions on the 7th.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson?

Mr. Gilles Bisson: Listen, the opposition is not making a peep about amendments on 191. We understand

the process. I've been in this Legislature for 20 years and understand that we're at first reading.

The issue is the Mining Act. We're going to have to reconcile a whole bunch of different positions around the Mining Act that need a fair amount of work; for example, the issue of map staking versus the open staking that we have now. We need to put amendments forward on that. There's an argument on both sides.

The whole issue of the dispute resolution mechanism: From what I've heard up to now, we've got a fair amount of work to figure out how that's going to work so it doesn't bog down the process, and at the same time, give people the right to have a real ability to resolve conflict. We're going to have to deal with the issue of subsurface rights with mining rights.

There are some really significant changes in this act, and to say you're going to have enough time by the end of this process, on September 7, for us in the opposition to go back to the stakeholders and have discussions with them about what amendments we're able to live with in order to get us to where we want to go and then sit down with legislative counsel and have them draft it and then go back and show it to them again to see if they're happy and make the amendments ourselves—you can't do that by the 7th. What you're going to be saying to Ontarians, First Nations, the mining companies and others is that you've made up your mind, you're just going to do what you darn well please, and at the end of the day we're going to have an act that is not going to get us where we want to go.

I say again, we in the New Democratic Party support what you're trying to do in this legislation. The principles are good. We want to give First Nations a real say when it comes to what happens on their traditional territories. We need to provide a regime that, at the end of the day, doesn't scare investment out of the province of Ontario, and we need to have some mechanism in order to make sure that they benefit financially and job-wise when it comes to the activities of mining—all something that I've heard every stakeholder speak to. But what this bill does is not get you there.

So I'm saying, if you really want an act that works—we've been with the Mining Act for how many years now? Over 100 years? We've survived so long, and we've built a pretty prosperous mining industry in northern Ontario. Waiting another couple of weeks is not going to kill prosperity in Ontario. If anything, it'll help us do something right by way of First Nations and by way of the mining industry.

The Acting Chair (Mrs. Linda Jeffrey): Further debate? Mr. Ouellette.

Mr. Jerry J. Ouellette: I would just ask if September 23 or 24 could be a consideration. I'd like to make sure I'm part of the process. The other committee that I'm Vice-Chair of will be back at that time and able to participate in that process.

When the House rose, I don't think we knew at that time, unless I missed something, that we were coming back on the 14th. It wasn't established until later. The

opportunity to be there for clause-by-clause I would very much appreciate because this does have a significant impact, I think. That's what I ask: just consideration for the following week. I don't think we're meeting the 21st and 22nd; that's why I said the 23rd and the 24th.

The Acting Chair (Mrs. Linda Jeffrey): Further debate? Seeing no further debate, the motion's on the floor.

Mr. Gilles Bisson: Recorded vote.

Ayes

Brown, Johnson, Mauro, Mitchell, Sousa.

Nays

Bisson, Hillier, Ouellette.

The Acting Chair (Mrs. Linda Jeffrey): The motion is carried.

Committee, this—

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): Committee, could I have your attention, please? This concludes the delegations for the Standing Committee on General Government. We're adjourned until 9 o'clock tomorrow morning in Thunder Bay.

The committee adjourned at 1056.

CONTENTS

Monday 10 August 2009

Election of Acting Chair	G-875
Mining Amendment Act, 2009 , Bill 173, <i>Mr. Gravelle</i> / Loi de 2009 modifiant la Loi sur les mines , projet de loi 173, <i>M. Gravelle</i>	G-875
Far North Act, 2009 , Bill 191, <i>Mrs. Cansfield</i> / Loi de 2009 sur le Grand Nord , projet de loi 191, <i>Mme Cansfield</i>	G-875
Porcupine Prospectors and Developers Association.....	G-875
Mr. Bill MacRae	
Cat Lake First Nation; Slate Falls First Nation.....	G-878
Mr. Steve Winsor; Mr. Wilfred Wesley	
Congress of Aboriginal Peoples	G-884
Chief Kevin Daniels	
Ontario Coalition of Aboriginal People	G-887
Mr. Brad Maggrah	
Committee business	G-890

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziatti (Sault Ste. Marie L)

Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mr. Robert Bailey (Sarnia–Lambton PC)

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mrs. Carol Mitchell (Huron–Bruce L)

Mr. David Oraziatti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mr. Rick Johnson (Haliburton–Kawartha Lakes–Brock L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Charles Sousa (Mississauga South / Mississauga-Sud L)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. James Charlton, research officer, Legislative Research Service



G-34

G-34

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Tuesday 11 August 2009

Journal des débats (Hansard)

Mardi 11 août 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Far North Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant
la Loi sur les mines

Loi de 2009 sur le Grand Nord

Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Tuesday 11 August 2009

Mardi 11 août 2009

The committee met at 0900 in the Valhalla Inn in Thunder Bay.

The Acting Chair (Mrs. Linda Jeffrey): Good morning. The Standing Committee on General Government is starting.

We're here to discuss Bill 173, an Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North.

Mr. Gilles Bisson: Point of order.

The Acting Chair (Mrs. Linda Jeffrey): Yes, Mr. Bisson?

Mr. Gilles Bisson: I note, Madam Chair, that we don't have a Vice-Chair, and I'd like to nominate Mr. Lou Rinaldi as our Vice-Chair.

Mr. Jerry J. Ouellette: We'll second the nomination.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion? All those in favour?

Mr. Bill Mauro: I have some concerns I'd like to register.

Laughter.

Mr. Lou Rinaldi: Thank you very much for the opportunity.

Mr. Gilles Bisson: I told you we were going to help you this morning.

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): That's great. I was going to ask you if you wanted it, but I figured I'd better not ask.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines, and Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

The Acting Chair (Mrs. Linda Jeffrey): Our first delegation this morning is the Grand Council of Treaty 3. Is Grand Chief Diane Kelly here this morning? No. Okay. I'll move on to our next delegation.

Maybe we'll wait a minute or two. We might have some of our delegation here.

Mr. Gilles Bisson: We could always come back to them.

The Acting Chair (Mrs. Linda Jeffrey): We can.

PORCUPINE PROSPECTORS
AND DEVELOPERS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Porcupine Prospectors and Developers Association. Is someone here from that organization? I'm guessing this isn't Kristan Straub. Is this Mr. Don MacRae? Is that right?

Mr. Bill MacRae: Bill.

The Acting Chair (Mrs. Linda Jeffrey): Bill MacRae. Good morning, Mr. MacRae. I know you know the drill but I'm going to go through it because we have other presenters sitting in the audience.

You have 15 minutes when you begin, and if you could identify yourself and the organization you speak for. At the end, I'll give you a warning if you get close to the one-minute mark. After that, we'll be asking questions. When you're ready to go, you have 15 minutes. Welcome.

Mr. Bill MacRae: Good morning again, Madam Chairman and committee members. I'm Bill MacRae, vice-president and past president of the Porcupine Prospectors and Developers Association. Thank you for providing the opportunity for me to present to you today. Some of this will be familiar from yesterday but I do have some new stuff.

The PPDA is a regional association of prospectors, explorationists and mining industry members that can trace our beginnings back to 1939. Our main function is to advise and consult with Ontario ministries and departments on any issue that affects the progression from prospecting to mine development and closure.

We generally maintain a membership of 120 individual and 15 corporate members. We have been by far the most active regional association in Ontario and are responsible for the establishment and structure of what is now the Ontario Prospectors Association.

There have been many statements of the age of the Mining Act in Ontario. The act was first put in place in 1873 and then revised or rewritten on a regular basis, with the last in 1990, when the act was modernized to

reflect values of the time, with changes to protect surface rights holders and switch to a monetary system for maintaining title to crown land mining rights.

The present mining industry is governed by the Mining Act and is now heavily impacted by the Endangered Species Act, the boreal initiative and now the far north planning act and the Mining Act modernization. We operate under permits and guidance from the Ministry of Labour, Ministry of the Environment, Public Lands Act, the Forest Fires Prevention Act, the Endangered Species Act and the parks act, among many others.

Our position on Bill 173 and Bill 191: Both acts have been written and put in place far too quickly, with many contentious issues not adequately dealt with. To this point, Bill 191 is so poorly written that it has to be withdrawn and rewritten to be clearer, and appropriate funding put in place to move forward on a reasonable timeline.

The minister's statements on Bill 173 emphasize that the new act is a balanced approach. Does this mean that the present act is unbalanced?

Public opinion is that the Mining Act is being rewritten to placate special interest groups such as cottagers and surface rights holders in southern Ontario.

Also, in recent legal rulings, the Ontario government has been charged with the responsibility of being the lead in negotiations with First Nations. This act is pushing that obligation down to individuals and the mining companies.

Specific issues that have been identified by our membership with Bill 173 are: free-entry restrictions and security of title; indiscriminate withdrawal of mining rights; far too much being shoved into regulations; exploration permits; the power of search and seizure exceeding necessity; downloading of the responsibility of consultation with First Nation communities; payment in lieu of assessment to maintain mining rights; and prospector awareness programs.

I will now discuss a couple of selected issues in more detail.

Exploration permits: Exploration permits have been in use since at least the late 1970s. The old permits were not very specific, in that the concerns were more tailored to generally where you were on the property, the type of work anticipated and the type of equipment to be used. Stream crossings were an issue but dealt with locally. These permits had a 30-day turnaround time, but before they were eliminated, the response time became longer and longer, probably due to a lack of commitment to continuing with them.

The new exploration permit proposal will be handled by MNDMF, and if insufficient funds are allocated to staff the permitting process, then long delays will ensue. This is the present situation with mining lands and the assessment approval process not responding in a timely manner.

An exploration permit has to be sufficiently vague so that as an exploration project progresses, a shift in priorities by the discovery of new information does not need to be re-evaluated by MNDMF but can react. The

ability for programs to shift focus "on the fly" is often the merits of good management that investors look for and invest in.

Bill 173 requires the explorer to not deviate from the planned activities, or they may be liable for a minimum fine of \$25,000 a day: a bit onerous, and an assumption that the explorer is at fault. What checks and balances are in place to assure the public that the crown is acting in the best interests of the people of Ontario? The inspectors and agents for Bill 173 have more authority and power than the police, but without any accountability.

The next issue is the withdrawal of mining rights. The withdrawal of mining rights with overlying surface rights in southern Ontario should not have been all-inclusive, but should have followed the suggestions for withdrawal in northern Ontario. Do we want to further create two classes of Ontarians? There are individuals in southern Ontario who would welcome mining development and the opportunity to realize a monetary gain from the development associated with mining. A system as proposed for northern Ontario would require a property owner to apply to have the mining rights withdrawn and the permission granted if the mineral potential is low. This process for withdrawal would not differentiate between northern and southern Ontario.

A point of note is that the withdrawal order for all mining land under patented surface rights was issued almost one hour prior to the bill being presented in the House—a bit premature, considering Bill 173 has not yet been passed.

Bills 173 and 191 have been put in place long before they are ready. It is clearly done for political posturing and has nothing to do with full consultation with all parties impacted by such legislation. These bills could be in place for 20 years or more. Is the government willing to be seen as one that would rather do something quickly, or to be recognized as doing the best effort possible?

In conclusion, the parks act is in place for the benefit of parks, the environment act is to protect the environment, and the Endangered Species Act protects endangered species. Why does Bill 173 penalize the mining industry and place roadblocks in the way of the search for and development of new mines, a wealth generator for the province of Ontario? The future of Ontario if this legislation is enacted is that the rocks do not stop at the provincial boundaries, and if this bill is not changed, the grass will be greener across the border, and exploration funds will flow to other jurisdictions.

Thank you. I would be pleased to answer any questions at this time.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Mr. Ouellette.

0910

Mr. Jerry J. Ouellette: Thanks very much for your presentation again today. I have some questions on the map-staking aspect, if you don't mind going into that.

I currently hold and have held, since the 1980s, a prospecting licence. One of the concerns when I was in the field was that map staking may make it easier to tie

up lands so that juniors will not be able to develop those lands. What the majors do is they send out staking individuals—in groups of four, usually—and they'll go stake large tracts of land that will tie up the land to disallow it to be developed. Do you think this will make it easier with map staking to proceed in that fashion or not?

Mr. Bill MacRae: No, I believe the large companies will still have the advantage—

Mr. Jerry J. Ouellette: Yes.

Mr. Bill MacRae: —and that they have the technology and the people who can quickly react to this.

Mr. Jerry J. Ouellette: But they would continue on to be able to tie up lands so it can't be developed?

Mr. Bill MacRae: Yes.

Mr. Jerry J. Ouellette: But my belief was that the map staking would actually make it easier for a large corporation to tie up those lands so they couldn't be developed.

Mr. Bill MacRae: Well, our opposition to map staking is not the large company tying up the lands, because they can do that whether it's hiring 50 people to go out and stake an area—it's the competitive advantage, that an individual has the same right and abilities to stake a claim as a company. When you come down to people on the ground, it's individual competing against individual. It's not how fast you can access the system.

Mr. Jerry J. Ouellette: Yesterday, you mentioned that there was some concern, with the ability to gain access to some of the First Nations-land planned areas, that there would be selective individuals allowed to do this. Afterwards, we spoke with individuals and didn't get that sense that that was what was happening. Do you have examples of parts of the province where you may be hearing that sort of aspect now?

Mr. Bill MacRae: Yes, I heard that directly from the chief of the Constance Lake reserve. Also, the Wabun Tribal Council made that statement. These are all northeastern Ontario situations, but that's what I deal with. So, yes, I have.

Mr. Jerry J. Ouellette: Thank you. Those are all of my questions for now.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson?

Mr. Gilles Bisson: Just back to map staking again. Quebec has gone to that model for—I don't know, I guess it has been five or 10 years that they've had the map staking. In your estimation, what has that done to the Quebec industry and what has that meant to the industry overall? What has been the experience?

Mr. Bill MacRae: The experience has been that, when Quebec went to map staking, they looked at the revenue that the stakers were generating. A couple of years later, they found that there was no difference in their revenue, but there are several reasons for that. One is that most stakers don't declare their revenue; they're paid cash and don't declare it. The second is that 90% of the stakers in northwestern Quebec simply moved and staked in Ontario, where it was still a viable industry. I don't think

they moved into secondary support industries; I think they just shifted their focus.

Mr. Gilles Bisson: So did it add or lessen the capacity to find new mines?

Mr. Bill MacRae: It didn't—probably lessen, but I don't think it added.

Mr. Gilles Bisson: The issue, as I see it, is that we're trying to find a mechanism in this legislation so that we don't have the KIs again, where a company or prospector just can show up on the land and all of a sudden start doing not only staking, but exploration work. You need to have some mechanism to make sure that the First Nation has a say.

The compromise in this bill, as I see it, is, if you go to map staking, there's no disturbance of the ground, but then there's a requirement to notify the First Nation. Is there another way to get at this without eliminating map staking, in your view, where—

Mr. Bill MacRae: Without eliminating map staking? I think ground staking could still occur; I mean, ground staking is not intrusive or damaging to the land. There is already a process of consultation—before you start any exploration, you require consultation—but at what levels? I've seen different communities, First Nations communities, aboriginal communities, say, "Well, if you're just going in to prospect, no problem. Just let us know that you're doing it. We're not going to interfere. But if you're going in to do other things, we want to know about it."

So I don't think anybody in the industry does not understand consultation. It's just the capacity of the First Nations to handle consultation, at what level consultation has to begin, and whether firm rules and guidelines are put in place so that we understand what is required.

The Acting Chair (Mrs. Linda Jeffrey): To the government side. Mr. Brown.

Mr. Michael A. Brown: Thank you for taking the time to come and see us again here in Thunder Bay.

I want to pursue the map-staking issues, because I think they're important. The government's commitment to map staking is obviously for a number of reasons. First, in our view, it equalizes the opportunity for an individual prospector and a multinational to access claims. All you really need is access to a computer, which I'm sure most people in the business would have. Could you speak to that issue? One of the things we want to do is to encourage mineral development, and the experience, it seems, in other jurisdictions has had that effect. So could you help us with the view of your association?

Mr. Bill MacRae: Okay. You have to understand who prospectors are. Prospectors may not speak English, may not be literate, yet they may be excellent prospectors. It has nothing to do with your education; it's perseverance and the ability to go into the bush and do the work. So saying that all prospectors have access is not true, and larger companies will have better access. Prospectors don't always live in areas where high-speed Internet is available. You're dealing with lower speeds and troubled access onto the system. So I think there is still an ad-

vantage to larger companies or more aggressive companies to take advantage of that.

Mr. Michael A. Brown: Along that same line, I have a lot of friends who are prospectors, so I understand that. What's your view on the prospector's licence that is proposed?

Mr. Bill MacRae: The sensitivity training that—

Mr. Michael A. Brown: Yes.

Mr. Bill MacRae: Well, it depends how it is structured. If it is structured that you have to sit through a physical presentation and then walk away, it's probably all right. But again, you're dealing with people who may not be literate, so you can't have those expectations on everybody. And what about the 25-year licences, where the crown has granted a lifetime licence to a prospector? If he then can't pass this course, will he not be allowed to prospect when you've allowed him a lifetime licence? There are a lot of issues that have to be discussed about that.

Mr. Michael A. Brown: Those discussions are to be ongoing. I was in this very room and spoke to the North-western Ontario Prospecting Association some months ago, and I know there was an undertaking by the government to work with the associations to develop a means of making sure that we met the needs of the industry and the people in it.

Mr. Bill MacRae: Well, if we are allowed to be actively involved in the writing of the regulations, as we should be, then I think we can come to a reasonable conclusion to a lot of the details.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for coming today. We appreciate your being here.

GRAND COUNCIL OF TREATY 3

The Acting Chair (Mrs. Linda Jeffrey): We're going to return to our agenda. Would Grand Chief Diane Kelly be here from Grand Council of Treaty 3?

Welcome. Good morning. Thank you for being here.

I'm just going to go through a preamble. You're going to get 15 minutes to chat with us. I'll give you a one-minute warning when you get to the end. When you begin, if you could state your name and the organization you speak for. You'll have 15 minutes. If you get close to the end, I'll give you a little warning, and at the end there will be time for us to ask questions. When you're ready, begin.

0920

Grand Chief Diane Kelly: Okay. Good morning, committee members. My name is Ogichidaakwe, is how it's pronounced: It's Grand Chief Diane Kelly of the Grand Council of Treaty 3.

Again, good morning, committee members. Thank you for the time permitted today for us to speak to this Legislature about this act and its impact on the spirit and intent of our treaty, which is Treaty 3, northwestern Ontario.

Our main message is in the first slide of the deck, which I believe you have before you. The procedural defects weaken the act—the lack of oversight by an agent of the crown who will truly uphold the honour of the crown. The regulatory regime must reflect a jointly defined process that truly accommodates First Nations rights. Dispute resolution orientation, mining interests versus First Nations: The only certainty is that there will be disputes. Arbitrary deadlines for consultation processes will create only shallow and narrow approaches by industry.

Our key submissions are: The act has an ill-defined framework for upholding the honour of the crown and the duty to consult. Our Great Earth Law, Manito Aki Inakonigaawin, best reflects the proper approach to consultation and defining accommodations within our territory, which is, again, northwestern Ontario.

We have major procedural concerns regarding the present government's ability to properly consult First Nations.

Our major concerns are: In section 2: "The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment." An impact-based approach defining consultation requirements through a sliding scale of impacts will be both illegal and illegitimate in the eyes of the Anishinabe Nation in Treaty 3. Our way of life is strong, probably the strongest of any other grouping of communities in Ontario. We live by our traditional institutions to this day. Our older adults speak the language fluently, but this could easily change. Privatization of natural resources is not our way.

The chiefs stated in the 1873 treaty negotiations that led to the signing of Treaty 3 that they felt the rustling of gold beneath their feet. They knew where substantial gold deposits were in the territory and the value of these minerals and wanted to create a treaty that would lead to our community's wealth and well-being in a sustainable manner from that time forward.

Mineral rights in our territory: Millions of dollars have left our territory in gold and copper mining, with many environmental impacts as the only lasting result. Goldcorp, as an example, operates a gold mine near Red Lake, Ontario. We see this as unjust enrichment. Junior companies largely respect Manito Aki Inakonigaawin. They see the value in the certainty and the good relationships being defined through our law.

Bill 173 has particular importance to our area with the amount of activity in our southern region along the Rainy Lake, Lake of the Woods and English River watershed systems. We wonder why the act is not modernized to require a company like Goldcorp, which has located itself within our territory in the Red Lake vicinity, to accommodate Treaty 3's rights, or at least broach discussions with the Grand Council of Treaty 3, as that company has

been unjustly enriching itself in light of specific promises being made about minerals in the traditional territory of the Anishinaabe Nation in Treaty 3.

Policy-based consultations: As a first principle, accommodate our socio-economic interests in our territory. Jointly discuss government-to-government approaches that will allow us to prosper, as Canadians have prospered since the 1873 treaty was signed. As a second principle, consult us at a strategic planning level—a government-to-government approach to developments and policies vis-à-vis our joint interest in sustainable developments.

The honour of the crown cannot be delegated to industry. The duty to consult held by the crown is to give the opportunity for accommodation in a real way, accommodating our socio-economic interests rather than standing on the sidelines as the minister, expecting industry to accommodate our rights through impact-benefit agreements.

Treaty rights and accommodations: Our treaty is for “as long as the water flows and the sun shines—that is to say, forever.” This is the phrase that ends the Paypom document, which are the notes written by the Anishinaabe-hired notetakers to keep a record of our Treaty 3.

We have a phrase that embodies this idea of sustainability, and that’s Kaagige’Aki, which is the eternal land. Despite a treaty being signed, our territory would continue to sustain the Anishinaabe and our way of life forever.

These types of phrases resonate extremely with First Nations people, in particular Anishinaabe people, because we have lived in harmony with the land since time immemorial.

Principled submissions: Grand Council of Treaty 3 suggested that the new act should ensure or regulate the following important measures:

- (1) accommodation of inherent and treaty rights of First Nations;
- (2) respect for indigenous laws and jurisdictions and accommodation of the treaty framework through administrative harmonization of laws;
- (3) dispute resolution outside of the bureaucracy at arm’s length in a treaty commission of Ontario;
- (4) consultation at a strategic planning level on a government-to-government basis; and
- (5) industry-based discussions that will eventually lead to free, prior and informed consent by Grand Council of Treaty 3.

Protecting our rights: An arm’s-length commissioner in the treaty commission of Ontario should be settling the disputes—uninterested and unbiased opinions.

Local administrators are hard-pressed to advance our concerns in a regulatory regime aimed at promoting the minerals industry.

The withdrawal process needs to be on a government-to-government basis, not solely at the discretion of the minister or his or her agent.

Legislative accommodations: Section 29 should restrict any activity within a set parameter around our

reserve communities in light of our claims, rights and Treaty 3.

Full consent should be required within our territory, designated through a government-to-government negotiation between Grand Council of Treaty 3 and crown representatives. An MOU with MNDMF and Grand Council of Treaty 3 is already in progress.

Participation of First Nations should be a requirement or goal of the modern regulatory regime.

Within Treaty 3, we wish to remind the members of this committee, is a framework of relations between the Queen’s governments and the government of the Anishinaabe Nation. We are concerned that the principle of nation-to-nation relations has largely been usurped by administrative bureaucracy.

What we call the treaty framework was the principles of treaty making that led to good relations. Within this treaty framework are the Anishinaabe principles of legality and legitimacy, in addition to the British legal tradition. These Anishinaabe principles were shared and adopted as a prerequisite and an ongoing concern about being a good neighbour with the Anishinaabe.

Good neighbours respect that we both have joint interests related to the sustainability and health of our environment.

Good neighbours have a relationship of reciprocity. If you are in a situation where you impact us, you will compensate us. But prior to even encountering that situation, you will talk to us, hear our concerns and accommodate our rights to the best of your ability.

Good neighbours do not unjustly enrich themselves by monopolizing access and resources that must be shared.

Good neighbours do not unjustly enrich themselves by creating self-serving rules and regulations that limit access to First Nations and encourage practices that are unsustainable for future generations.

How to balance our rights: Honourably balance the constitutional rights of treaty First Nations against those of mining companies.

Substantiate equality principles: We need special policies and regulatory measures in order to assist our communities to meet the twin goals of self-sustainable economies and environments.

The 15-year life cycle of most mines means that the time is now to define a proactive legislative framework.

We have invested monies in defining our laws in order to bring certainty to investors and industry.

In subsection 4(5), the minister has the power to delegate any of his or her powers under the Mining Act “to the deputy minister or to any officer or employee of the ministry, subject to such limitations, conditions and requirements as the minister sets out in the delegation.”

You do not have jurisdiction to create this act without accommodating First Nations’ rights and interests. Case law is clear that it may in fact go in that trajectory. Your ministry does not have jurisdiction until it can show it has upheld the honour of the crown prior to making a decision within this act.

The most important issue that this new act must deal with is how to accommodate our rights and properly balance the competing interests, which are not constitutional. The section 35 rights are part of the permanent constitutional order; do not make these rights illusory.

Accommodation will require some way to measure the benefits and impacts that accrue to the First Nations in Ontario in a real way. Some parties have suggested a commissioner, similar to the Environmental Commissioner of Ontario, to report back to the Legislature on efforts related to the duty to consult. So you need an arm's-length commissioner to have an office that will uphold the honour of the crown. Nothing less will uphold this important duty.

The eternal land—Treaty 3: Our elders remind us constantly that if you take something from the land, you must give something back.

Legislatures must ensure that if land is used to support your economy, you must invest in its future sustainability and regulate it in partnership with the Grand Council of Treaty 3. Declaration orders to exempt mining activity from environmental assessments are short-sighted and bad public policy. Fix the environmental assessment regime if it is incompatible with mining or stop mining practices that are incompatible with environmental sustainability.

0930

Do not forget that the chiefs and I walked out of the October 2, 2008, regional workshop set by the Minister of Northern Development and Mines because it did not accommodate our rights regarding mutually defining the consultation process. We walked out because the minister's representative stated that the workshop, which was a presentation with pre-set questions, would be the only consultation afforded to us at that time.

Our 26 communities supported our efforts to work on a government-to-government basis on the Mining Act modernization. A new process was defined. We were told that we could have the time to engage our communities. The Minister of Aboriginal Affairs had specifically intervened. Our process was not accommodated, the way we define our positions and our ability to review the discussion paper and our own real, on-the-ground concerns regarding the prospecting, staking and active work being done in our territory. Our law, Manito Aki Inakonigaawin, where we authorize developments and activities in our territory, has been disrespected.

We stepped away from the process chaired by the Chiefs of Ontario and the assistant deputy minister of Northern Development and Mines. It did not accommodate our First Nations. It expected us to make serious concessions without any consultation with our constituencies. Yet our Grand Council took it upon ourselves to present the information to our communities largely at our own expense. We did not participate in the secret process because that is not our way of making important decisions dealing with the land or our treaty rights.

Protecting constitutional rights: prospecting awareness—a slight improvement over the status quo, but what

happens to prospectors with map staking? Map staking is incompatible with consultation requirements and is indicative of an impact-based approach to consultation; low impact equals notification only. The duty to consult is a measure of honourable dealing meant to protect, not interfere with, rights before they are proven, like land claim interests, as an example. Treaty rights are previously reconciled interests negotiated between the Queen and the First Nations. The Supreme Court of Canada has said this, and to get on with performance.

Grading Bill 173: It fails to uphold the honour of the crown in ensuring our rights are duly considered and in some instances hold special consideration—claim areas and withdrawals. It fails to meet the universal indigenous right of full, prior and informed consent. It creates an unsatisfactory dispute resolution power that is likely to mean that First Nations must continue to invest their precious and few resources in new arenas in order to fight in an adversarial setting once more. And there's a continuing need to use the common law, fostering the uncertain investment climate.

Under section 112, you clearly decided that an individual to be involved in settling our disputes cannot be the commissioner in the act under the appeals process. Again, an arm's-length, non-interested office is required.

What we ask is that this Legislature tell the executive that this act does not uphold the honour of the crown. It is subject to judicial scrutiny for that fact, and that will not bring the certainty to industry that such real, on-the-ground measures like Manito Aki Inakonigaawin, our Great Earth Law, does. There are several less-major concerns regarding the exercise of discretion throughout the act, where a localized officer will be required to balance our rights against their own self-interest or the self-interest of their community. This is not meeting the high bar of legal principles related to section 35 and specifically accommodating our socio-economic interests as promised in Treaty 3.

Meegwetch.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Grand Chief Kelly. Everybody has about two minutes to ask questions, beginning with Mr. Bisson.

Mr. Gilles Bisson: You made a comment in your presentation that consent would mean that you would require negotiations through Treaty 3. I take it that that includes the local First Nation as well.

Grand Chief Diane Kelly: Absolutely. Grand Council of Treaty 3 is the traditional government of the Anishinaabe Nation of Treaty 3. It's the representation of the communities.

Mr. Gilles Bisson: Now, Grand Chief Stan Beardy had mentioned last week—if I misunderstood, I stand to be corrected, but his view was that the NAN was not the one to negotiate; it was the local reserves themselves.

Grand Chief Diane Kelly: There is a distinction between Grand Council of Treaty 3 and NAN. NAN is an organization representative of two treaties; I believe it's Treaty 5 and Treaty 9, but that's some information that maybe the committee could research further. Grand

Council of Treaty 3 is the traditional government of the Anishinaabe Nation within Treaty 3, and that's the distinction. We are the traditional government. We've been there prior to the treaty and we're still there today.

Mr. Gilles Bisson: That's why. Okay. I needed that clarified. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Mauro.

Mr. Bill Mauro: Grand Chief Kelly, thank you very much for being here this morning. I'd like to make just a couple of comments before I ask you my question—and then I'm going to share my time, if there is still any remaining, with Mr. Brown—on the Mining Act. My comments will be in the context of Bill 191.

You talked a bit about duty to consult. Section 3 of Bill 191 states, "This act shall be interpreted in a manner that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult."

The other comment I wanted to make was in the context of consultation. I'm speaking on Bill 191 now. This is first reading only. This is quite significant, what we've done here in terms of bringing this legislation out to consult. We'll visit five communities on this, and we have written a letter expressing a desire on behalf of our government to hopefully go forward with the co-operation of the other two parties in terms of having further consultations after second reading on Bill 191.

My question for you is on the certainty. In your presentation, you talked a bit about certainty. I guess there's some belief, on our side at least, and I think even on the other, that the land use planning process in Bill 191 will in fact lead to certainty for all stakeholders involved in the issues associated with the bill. I'm wondering if I could have your comments on that, the land use planning process, given what's already occurred in Pikangikum, the positive steps that have been occurring already in Cat Lake and Slate Falls etc.

Grand Chief Diane Kelly: Certainly. Thank you for your question. I guess my comments around certainty have to do with our resource law, and that's Manito Aki Inakonigaawin. We don't see ourselves as a stakeholder; we see ourselves as a rights holder, and I think that's a very clear distinction. So with regard to certainty, when I mentioned that in my presentation and the submissions that we've made prior to this on the Mining Act, through our resource law, a company can gain an authorization. Once a company has that authorization, there won't be the opportunity for a potential claim such as KI to occur. That's how we view it. When we talk about certainty, that's what we mean. Once you have the authorization of the nation to go ahead with that activity, that is about as certain as you can get. There is nothing beyond that.

Mr. Bill Mauro: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier.

Mr. Randy Hillier: Just for my own clarification, you mentioned on one of the slides about Goldcorp and unjust enrichment. Can you expand on that a little bit for me and clarify why you view Goldcorp or others as having unjust enrichment in their activities?

Grand Chief Diane Kelly: Sure. I just used the example of Goldcorp because it's one of the largest mining companies in the world, as we all know. The other point is that they do have a mine that's presently in operation just outside of Red Lake, Ontario, which is within the Treaty 3 territory. Goldcorp has never consulted with us, with the Grand Council, they have never talked to our communities, and so we don't know how they could be given the permit to go in and have their company there. We understand that they are extracting millions of dollars' worth of gold. It's some of the purest gold in the world that comes out of the mine there. So I guess that's where that comment is coming from.

Mr. Randy Hillier: Okay. We'll go back, then, to the crown's honour and its duty to consult. Did the crown not consult, and is there no consultation with the crown and Treaty 3 with regard to Goldcorp?

Grand Chief Diane Kelly: Absolutely not.

Mr. Randy Hillier: Absolutely not.

You mentioned that you walked out of the workshops on Bill 173 earlier, and we've also heard from many prospectors and other interested groups that there was actually no consultation. You mentioned that there were pre-set questions at that workshop, and that there was no other open discussion or debate allowed from your part?

0940

Grand Chief Diane Kelly: That was how that workshop that we had—I believe it was in Kenora—how it unfolded. We had asked the person who was delivering that workshop directly if this was the only consultation, and they had agreed that it was.

Mr. Randy Hillier: And it was pre-set questions.

Grand Chief Diane Kelly: It was pre-set questions, yes.

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry, but your time has expired, Mr. Hillier.

I'll let you finish if you have anything else to add.

Grand Chief Diane Kelly: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for being here.

MUNICIPALITY OF SHUNIAH, DISTRICT OF THUNDER BAY

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the municipality of Shuniah, District of Thunder Bay, Reeve Maria Harding.

Good morning, and welcome. As you settle yourself: You'll have 15 minutes to speak to us. When you begin, if you could state your name and the organization you speak for, you'll have 15 minutes. I'll give you a warning if you get close to the 15-minute mark. At the end we will ask questions. When you're ready to begin, you can start.

Ms. Maria Harding: Thank you, Madam Chair, members of the standing committee. My name is Maria Harding. I am the reeve of the municipality of Shuniah, which lies on the easterly boundaries of the city of Thunder Bay. Shuniah is comprised of two geographic townships, MacGregor and McTavish. The municipality

of Shuniah incorporates a large expanse of land consisting of 55,374 hectares commencing at the east boundary of the city of Thunder Bay, spreading approximately 60 kilometres easterly, meeting the boundary of the township of Dorion, and northerly from the shores of Lake Superior approximately 14 kilometres.

Shuniah has a considerable cottage population, the number of households being 2,887, with its full-time population estimated at 2,348 people. However, during the summer months those numbers almost double and can be estimated as as high as 5,000.

With exception of the shoreline properties, the majority of the municipality is rural, and this is where the private landowners have felt the impact of the Mining Act over the past 136 years. Twenty-five per cent of the lands in Shuniah are legally described as mining locations rather than concessions and lots.

As reeve of the municipality, I feel bound to bring this deputation forward to you this day to represent the private landowners within the municipality of Shuniah. The problem we are faced with is the free entry to private land without contact or consultation, which allows prospectors to stake claims on minerals without notifying or consulting landowners.

It appears that in 1906 the Mining Act established what is called "free access to land by mining companies." This free-entry system mandated by the Mining Act gave the mining industry and others free access to land in their search for minerals, regardless of who owns the surface rights. The municipality of Shuniah is no stranger to this free-entry system. It has led to conflict with private landowners, businesses and local government by exhibiting a lack of regard for the environment and private landownership.

It is hoped that the reform of the Mining Act will reduce land use conflicts and reflect modern-day values as to how private landowners are treated.

The government claims that Bill 173 addresses the concerns of all stakeholders. It claims it will forge new approaches to mineral exploration that will be more respectful of private landowners. To really protect the environment and private landowners' rights, the act has to be able to address the following issues.

Firstly, it needs to ensure that comprehensive land use planning occurs before mining activities are allowed to proceed, so that the benefits of mining versus other land use can be taken into consideration and then informed decisions can happen.

Secondly, it must require environmental assessment to cover each stage of the mining process from the time prospecting starts, to exploration, to operation and to reclamation of the land.

Thirdly, it must provide increased rights for landowners to address issues with the free-entry system, and it must require full funding for cleanup and reclamation costs.

Fourthly, the legislation shall ensure that within an organized municipality the land use planning process precedes any mining activity and that a statutory prohibition on prospecting, exploration or mining in areas

that are covered by an official plan, which lies within the Planning Act, is subject to a public consultation process with municipal councils and affected landowners.

This amendment to the Mining Act also proposes a dual system where northern Ontario surface rights are treated differently than those of southern Ontario. In southern Ontario, the mining rights held by the crown will be deemed to be withdrawn from prospecting and staking, whereas in northern Ontario the mining rights held by the crown include a stipulation whereby the minister may issue an order withdrawing the mining rights from prospecting and staking upon the surface rights when an owner applies for the order.

In northern Ontario, the proposed amendments to the Ontario Mining Act will still allow exploration activities, including aerial surveying, felling of trees, blasting and drilling trenches, along with the construction of temporary roads and shelters, without any public consultation and environmental assessment to the uninformed landowner.

Private landowners in northern Ontario should have the same rights as those in other parts of the province. The legislation gives the First Nations the right to say no to prospecting on traditional lands, a right they should have. Why can't these same rights be given to private landowners who do not own mineral rights on their respective lands?

In summary, Madam Chair and members of the standing committee, I strongly request, on behalf of the private landowners in the municipality of Shuniah and in support of other property owners within the province, that you give these points I brought forward today very serious consideration to ensure that the rights of the private landowner are protected before finalizing any amendments to the Mining Act. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Beginning with the government side, there are about four minutes for questions.

Mr. Michael A. Brown: Welcome, Reeve Harding. I have a couple of questions. The first one is in regard to something I did not know, and I'm glad you brought this to my attention. You say in the brief that 25% of the lands in the township "are legally described as mining locations rather than concessions and lots." I don't quite understand how that works. Does it mean that there is private land there, that the owner has a deed to the private land?

Ms. Maria Harding: That is correct. In the municipality of Shuniah, people who own larger tracts of land like 100, 200, 300 acres only own the surface rights to most of that land; they do not own the mineral rights. Therefore these people have no control over who goes onto their lands and what is happening. That is what this is about.

Mr. Michael A. Brown: Just so I understand, it's a situation where private landowners own the land, but—

Ms. Maria Harding: But not the mineral rights.

Mr. Michael A. Brown: —in 25% of the township the crown has the mineral rights.

Ms. Maria Harding: Yes.

Mr. Michael A. Brown: Okay. That helps me. I wasn't quite understanding what that means.

So there is within this legislation the right of the landowner to ask that the ministry withdraw their land from staking, and you're saying that's insufficient? Any landowner could ask that mineral rights revert to the crown, as they will in southern Ontario?

Ms. Maria Harding: If we can be guaranteed that that will happen and that we are allowed to do that, I'm quite sure there wouldn't be an issue.

Mr. Michael A. Brown: That's within the act, that the landowner can ask that the mining rights be withdrawn.

Ms. Maria Harding: And what are the probabilities that that will happen?

Mr. Michael A. Brown: The act describes it as having regard to what mineral potential might be on the property. I'm not exactly sure how that is to be assessed, but my guess is that it would accommodate most landowners.

As you know, in many places in northern Ontario, mining is something—for example in Sudbury, in parts of my friend Mr. Bisson's riding in Timmins etc. there would be a different view from that of southern Ontario as to how staking might occur. That is why the government has differentiated between southern and northern Ontario, because of the experience we have in some of our mining centres.

0950

So we appreciate your concerns, and I think maybe we've accommodated them as we go forward here. It's just that the landowner in the case of northern Ontario has to request of the ministry that the rights to stake be withdrawn.

I don't really have any more.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Mr. Ouellette?

Mr. Jerry J. Ouellette: Thank you for your presentation, Reeve Harding. It's nice to see you again.

One of the questions I have, though, is with regard to section 29, which deals with restricted lands: "on any land that is a residential or cottage lot smaller than one hectare in area." Are you familiar with that section of the bill that talks about restricted lands?

Ms. Maria Harding: The way I read it is that if you are in a plan of subdivision, you cannot be staked.

Mr. Jerry J. Ouellette: It specifically states a "cottage lot." As a reeve, can you give an official designation of a cottage lot?

Ms. Maria Harding: A cottage lot, in the definition of Shuniah, is a property that abuts the lake.

Mr. Jerry J. Ouellette: Some of the difficulty, as I recall, is that there is no official designation, because if somebody doesn't buy the 66 feet of frontage on the water, then it's not water frontage, so it's not an official designation as a water lot. The Ministry of Natural Resources, several years ago, sold off a considerable number of lots that they had staked off in the 1970s. They are all double lots; they are two lots in size. So the difficulty there is, is that a single lot? Is that a double lot? I think that's very confusing in the way the legislation is

drafted out. It doesn't specifically state if it's a single owner or occupant or whether one individual can buy a multiple number of lots in order to get over the size restrictions or under the size restrictions. I'm just wondering if you've had any discussions about that, and I think not, from what I'm seeing here.

Ms. Maria Harding: Well, we're in the process, in Shuniah, of addressing our official plan in reference to cottage conversion. As you know if you know Shuniah, I'm quite sure, we have properties that are very much undersized for year-round residency, and we're in the process of changing our system. We are going from a described size to an environmental study kind of process. So we have people who have 50-foot-wide lots; we have people who have an acre, an acre and a half. It depends on how the subdivisions were developed in the 1930s, when this happened. People who did not have the appropriate size very often purchased their shoreline allowance to fall within the regulations we had at the time. Many people do not own the shoreline allowance because they don't see a need for it. Other people purchase their shoreline allowance because they have a sandy beach. If you have a rocky shore, you may or may not purchase. It depends.

Mr. Jerry J. Ouellette: So it complicates the definition of cottage lot as to whether they purchase the 66 feet of frontage.

I think one of the aspects, Reeve Harding, is that for a lot of the individuals that we're hearing from, the concern is the actual trenching component of the prospecting moving forward, and the retention. Have you heard of any opposition to the drilling component where organizations would come in and drill because it's less intrusive and the damage done to the land or the impact is minimalized at that time? Does your municipality have any opposition to the drilling aspect of it?

Ms. Maria Harding: We haven't discussed it, to be really honest. Our concern very much right now, and this has happened during the last week, is this massive staking of our municipality. It's massive. It's almost like there's an invasion, and people are wondering what's going on. No one knows what's happening. This has happened since I agreed to come before you. We don't know why it's happening, but there isn't a stitch of Shuniah north of the shoreline that hasn't been staked during the last week. So we would like to know.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just to follow up on some of the comments made, we have the same situation across northern Ontario: a lot of private property owned by cottagers and farmers etc., where mining interests may happen. It's been my experience that there is an approach on the part of the exploration to get an agreement with the property owner before going forward. Is that not what happens in your situation?

Ms. Maria Harding: All we know is that they're out there staking. We don't know who they are. We look at the little plates that they have to attach to the posts and we still don't know who the people are who are doing it,

and we don't know why it is happening all of a sudden, within the last week.

Mr. Gilles Bisson: It's probably happening all of a sudden right now because they're anticipating a change in the act coming.

Ms. Maria Harding: We know; yes.

Mr. Gilles Bisson: I would think that's what's going on. But I guess my question is, has there been in your municipality an example where a property owner has had exploration—I'm not talking staking, but actual exploration—done on their property without the permission of the property owner?

Ms. Maria Harding: I am not aware of that.

Mr. Gilles Bisson: Okay. So if you were to have something clarified in this act that made it mandatory, that clarified the process of getting permission and what that means after, would that satisfy the citizens in your community? In other words, I'm a cottage owner or whatever it might be, I own a piece of property, and there's a mining interest that wants to come and do physical exploration on my property: (a) permission must be granted by the property owner, and (b) there's some sort of structure as to what is allowed to happen on that exploration activity.

Ms. Maria Harding: I am not sure that cottage owners would agree to that, but I can speak for landowners who own larger pieces of land.

Mr. Gilles Bisson: Okay. Now, under the current bill, and Mr. Brown alluded to this, there is a dual system. There is the southern Ontario system which says you're going to withdraw the mining rights altogether, and in northern Ontario, you have to apply to get your mining rights withdrawn. You've spoken to that. I take it what you're basically saying is that you want the same system for all of Ontario and you favour the southern model.

Ms. Maria Harding: Yes. I think it would be fair. We wouldn't be two sets of citizens in Ontario.

Mr. Gilles Bisson: So conversely, would you agree to the same system for everybody being the northern model? I'm just curious. Is it because it's different or is it because of the ultimate end?

Ms. Maria Harding: The ultimate end.

Mr. Gilles Bisson: The ultimate end. Okay. Thank you.

Ms. Maria Harding: If I may add one more thing.

The Acting Chair (Mrs. Linda Jeffrey): Yes.

Ms. Maria Harding: The name Shuniah is an Ojibway word for "silver," which means money.

The Acting Chair (Mrs. Linda Jeffrey): Excellent. Thank you very much for being here today. We appreciate it.

OJIBWAYS OF THE PIC RIVER FIRST NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Ojibways of the Pic River First Nation. Is Jamie Michano here? Did I pronounce that right?

Mr. Jamie Michano: You did.

The Acting Chair (Mrs. Linda Jeffrey): Welcome. As you get yourself settled, you'll have 15 minutes. I'll give you a warning if you get close to the end, just a heads-up, and then we'll be able to ask questions afterwards. Whenever you're ready to start, if you could just state your name and the organization you speak for.

Mr. Jamie Michano: Good morning. My name is Jamie Michano. I'm a member of the Ojibways of the Pic River First Nation. We are a small Anishinabek community located on the north shore of Lake Superior, approximately 300 kilometres east of Thunder Bay.

A proactive community, our leadership undertook an extensive research project to better understand the territory our members historically occupied. The data collected as part of this project will be used as evidence in our aboriginal title claim currently before the Ontario court. Our traditional territory extends from the Aguasabon River near Terrace Bay, east to the Wabikoba Creek and from Lake Superior north to Highway 11.

The level of mineral exploration and mining activity within our traditional territory is quite extensive. Since our land claim was filed, 1,625 mining blocks have been licensed in our traditional territory, representing an allocation of over 240,000 hectares. Additionally, since 2001 there have been 13 long-term, 21-year leases either issued or reissued within our traditional territory. These leases account for the allocation of over 3,900 hectares of land.

It is without question that Pic River First Nation is right in the active heart of mineral exploration activity. Without a means to legally involve ourselves in discussions with prospectors, exploration companies or large mining giants, we were forced to sit on the sidelines while these large mining companies extracted billions of dollars of resources from our territory with little or no benefit to the community.

1000

While some exploration companies made valiant efforts to engage Pic River First Nation in discussions regarding the exploratory work they were doing, others had no legal obligation to include Pic River First Nation leadership or members in discussions surrounding the exploring or mining they were doing in our backyard.

Following the Supreme Court of Canada decisions in Haida and Taku River and Mikisew Cree in 2004 and 2005, we now see greater attempts by exploration and mining companies to engage Pic River First Nation in the consultative process, yet we still face challenges when dealing with the crown. Our challenges with the concept of consultation were based solely on operation within draft frameworks, such as the province of Ontario's draft guidelines for ministries on consultations with aboriginal peoples, dated June 2006, or INAC's interim guidelines for federal officials to fulfill the legal duty to consult, dated February 2008. With no clear guidelines to follow, Pic River First Nation leadership made the decision to develop and implement a framework which provided clarity on how the consultative process would unfold for future consultations with our First Nation. In October

2008, leadership adopted the Pic River First Nation consultation and accommodation law. This framework offered much-needed clarification on how to properly and meaningfully consult with our community. Exploration and mining companies acknowledge and respect this framework and make every effort to work within the constructs of this document.

The 2007 discussion paper *Towards Developing an Aboriginal Consultation Approach for Mineral Sector Activities* states: "The Ontario government wants to work with aboriginal communities, aboriginal groups and industry representatives to develop a range of tailored consultation approaches that provide clarity and direction on when and how to consult with aboriginal communities on mineral sector activities." Further, the discussion paper is named as "one of the tools MNDM is using to seek comments, concerns and ideas to help (them) collaboratively develop aboriginal consultation guidelines for mineral sector activities." The Pic River First Nation framework provides just what the Ontario government has been seeking since 2007. Yet in 2009, when Pic River First Nation has clear guidelines on their consultative process, the Ontario government and a number of its ministries continually fail to acknowledge and respect our framework.

In the context of Bill 173, Pic River First Nation leadership provided clear direction from the moment the announcement was made that the Mining Act would be modernized. We wanted to be involved and fully engaged in this process. We were prepared to provide meaningful feedback, provided we were properly informed and that we were consulted on our terms. The process that unfolded couldn't be further from our initial expectation. Rushed from the start, our leadership expressed great concern with the unreasonable timelines with the public consultations related to this very important process. Presumably after considerable political pressure from First Nations across the province, there was a one-month extension on consultations with the First Nations. With the one-month extension still being unrealistic, the First Nations continued to request more time to properly review and gather necessary technical expertise to provide meaningful feedback on the issue. The additional extension and subsequent funding provided to the Union of Ontario Indians to engage their communities in the Mining Act consultations afforded a glimmer of hope that we would finally be able to gain the appropriate level of awareness of the previous Mining Act, and then be able to collect technical knowledge and legal understanding to offer meaningful feedback regarding changes to the revised Mining Act.

The Union of Ontario Indians, along with the Ministry of Northern Development and Mines officials and their consultants, visited 11 of 43 Union of Ontario Indians communities during the month of January 2009. During these sessions, the First Nations were fed 14 questions and were asked to respond to these questions. From my understanding, there were very low turnout rates at each of the communities. At best, I figure about 400 com-

munity members attended these union sessions, which translates into about 1% of the Union of Ontario Indians membership. Following these 11 sessions, both the Ministry of Northern Development and Mines and the Union of Ontario Indians declared victory in that First Nations consultation on the modernization of the Mining Act was complete. I do not understand how meaningful and proper consultation occurs when 400 out of 43,000 members have been spoon-fed 14 specific questions.

Pic River First Nation was one of the participant communities in the union sweep of consultation sessions. At that session, there were clear expressions of concern raised by community members regarding the undertaking of consultations by a regional body engaging its communities in this process and in turn calling it "meaningful consultation" in the absence of widespread community engagement and involvement.

Another area of personal concern with the revisions is the reference to section 35 of the Canadian Constitution Act. Reference in the new Mining Act to section 35 does little to protect First Nation and aboriginal and treaty rights. Section 35 rights are still undefined in law, and more often than not, a determination of the asserted right is made at the Supreme Court of Canada and will be interpreted on a band-by-band basis.

Moreover, First Nations who assert these rights are left with the burden to prove their assertion. To support the burden of proof then leads the First Nation to undertake extensive and expensive evidence of a historical and cultural relationship to the lands where rights are asserted.

While there are provisions to support aboriginal values-mapping and community land-based planning initiatives referenced in the revisions, these initiatives are geared towards the far north only. My concern is that without provisions for all First Nations in Ontario, we will continually be faced with disputes such as the Kitchenuhmaykoosib Inninuwug and the Ardoch incidents.

I was recently hired by my home community as their lands and resources coordinator. My role is based on building positive relationships that we form not only with third parties that are operating within our traditional territory but also with both federal and provincial ministries and agencies.

This process is a perfect opportunity for Ontario to work with the First Nations towards a balanced approach on consultations on mining activity throughout Ontario. However, failure to acknowledge the consultative frameworks that have been developed by First Nations, who have a certain level of understanding of the consultation and accommodation process now, may still result in instances where disputes can occur.

I appreciate the opportunity to voice my concerns. Meegwetich. Very short.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Beginning with Mr. Hillier, you have about three minutes.

Mr. Randy Hillier: Thank you very much. You mentioned again, and we've been hearing this time and time again, pre-set questions, and that's been your

experience as well: no meaningful dialogue or debate. I think you used the term “spoon-fed questions.”

Mr. Jamie Michano: Spoon-fed.

Mr. Randy Hillier: I'd like to get your thoughts, because you also alluded to a couple of things during your presentation, that the far north has a set of laws, the near north will have a set of different laws, and southern Ontario will have a different set of laws again.

Mr. Jamie Michano: Right.

Mr. Randy Hillier: Just your—

Mr. Gilles Bisson: We're used to it.

Mr. Randy Hillier: Justice also usually has the term “equality”—equality before the law. Do you think that that is appropriate, that we should be treating people with different sets of laws where they live, or do you think we can make this Mining Act a truly just document by treating everybody equally?

Mr. Jamie Michano: Thanks for the question. Speaking from the First Nations perspective and Pic River First Nation, I know that each First Nation is going to be unique. I guess my comment would be—

Mr. Randy Hillier: You can still be unique and still have equality.

Mr. Jamie Michano: Exactly, but when we talk about the consultation and accommodation and we talk about the consultative process and how you're going to be dealing with the First Nations, I just think that it's important to respect and acknowledge the frameworks that they have in place.

1010

Mr. Randy Hillier: Yes. We're also seeing the same thing from municipal governments, for example, that—

Mr. Jamie Michano: Exactly.

Mr. Randy Hillier: —municipal governments are not being consulted and engaged in the process. Individual landowners, whether aboriginal, First Nations or private landowners—whatever—are not being engaged and treated equally with process and engagement. It appears to me that that is one of the big problems that we're facing with this bill. We're trying to treat everybody differently, and of course, we're not going to get satisfaction from anybody.

Mr. Jamie Michano: It seems like we're trying to catch up. Maybe these changes could have happened progressively over the 163 years that changes haven't happened.

Mr. Randy Hillier: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): You have more time. Do you want more time? A short question.

Mr. Jerry J. Ouellette: Thank you for your presentation. Would you view this as an official consultation? You're presenting; we're asking questions. Do you think this is an official consultation?

Mr. Jamie Michano: Would I view this as an official consultation?

Mr. Jerry J. Ouellette: Yes.

Mr. Jamie Michano: Not with the First Nation. I'm a single member of one First Nation.

Mr. Jerry J. Ouellette: Thank you. Also, one other quick question—

The Acting Chair (Mrs. Linda Jeffrey): Sorry; you've run out of time. Mr. Bisson.

Mr. Gilles Bisson: You stated in your presentation to us that you set in place a policy framework that I think I heard you say has been working fairly well with mining interests. Since then, have all mining explorationists adhered to this policy?

Mr. Jamie Michano: Yes.

Mr. Gilles Bisson: But then you went on to say that the province has not, and I was a little bit intrigued with what that was all about.

Mr. Jamie Michano: In our experience, the mining companies and the exploration companies that are currently operating within our territory come to the table and there is now clarity. They now understand how Pic River wants to be consulted. When it comes to one of Ontario's ministries or to other federal agencies, their arms go up and they can't even acknowledge that there's a framework in place. They say, “Oh, yes, we understand that it's there. A lot of work went into it, blah blah blah, but we can't acknowledge it and we can't follow the guidelines. We can't follow this framework.”

Mr. Gilles Bisson: So that's when they come on to your territory for whatever type of work that they've got to do. Isn't that interesting?

Mr. Jamie Michano: Very.

Mr. Gilles Bisson: So let me ask you this: There's this whole discussion around map-staking versus staking. I'd fall on the staking side. I think staking is a much-preferred way of being able to do exploration rather than giving large companies an ability to map-stake. The difficulty here is, in order to attract investment and for the activity of mining to happen, you have to have open access. But there lies the problem for private property owners and for First Nations: They don't have a say sometimes about what happens on their territory.

If staking was limited—strictly staking. All you could do was go there and stake the claim, and then notify the First Nation. Then any work thereafter would be prescribed in the bill, a process of discussion, consultation and consent. Would that resolve the issue, in your view?

Mr. Jamie Michano: That would definitely help. At least we would understand where they're going. To be involved at the beginning I think would help the process.

Mr. Gilles Bisson: So it's not the activity of staking that is the source of irritation.

Mr. Jamie Michano: No.

Mr. Gilles Bisson: It's what happens after the staking.

Mr. Jamie Michano: Yes.

Mr. Gilles Bisson: Okay, thank you.

The Acting Chair (Mrs. Linda Jeffrey): Government side, Mr. Brown.

Mr. Michael A. Brown: Thank you, Madam Chair.

Good morning. It's good to see you. Just so you know, I represent the Manitoulin, so I have a reasonable association with the Union of Ontario Indians, given its present leadership. I'm interested in your 14 points of

consultation, which, as the member for Timmins–James Bay just alluded to, companies appear to be adhering to, but you're having some difficulty getting either the province or the federal government to formally recognize them. Would that be fair to say?

Mr. Jamie Michano: Right. Yes.

Mr. Michael A. Brown: Could we get—the committee itself—a copy of those 14 points so that we could have a look at them?

Mr. Jamie Michano: Sure.

Mr. Michael A. Brown: I guess one of the problems is—and my friend from eastern Ontario was alluding to it—that there seem to be different rules for different places and different laws for different places. Part of the issue here, I guess, is that different First Nations are subject to different treaties that they've made with the crown, depending on where you are, etc., and history has sort of dictated how those go. So, obviously we need to treat different First Nations differently, depending on where they are. The big issue, though, I think was raised yesterday: The relationship is with each First Nation, not with the umbrella organization, whatever it might be. Would that be your view?

Mr. Jamie Michano: Absolutely.

Mr. Michael A. Brown: For example, I represent Pic Mobert, which isn't all that far from you, and they may take a little bit different issue with how to conduct consultations than you do. So the crown's duty then, in your view, is to work with each First Nation to come to an agreement about what consultation is.

Mr. Jamie Michano: Exactly.

Mr. Michael A. Brown: Okay. I just want to thank you for coming. I know that your First Nation has been very active in resource development and is doing good work out there. I just want to commend you for coming here and making this presentation. If I could get a copy of those 14 points, I would appreciate it. Thank you.

Mr. Jamie Michano: Sure.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today.

ONTARIO NATURE

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Ontario Nature, Peter Rosenbluth, Northern Connections coordinator. Good morning and welcome.

Mr. Peter Rosenbluth: Good morning.

The Acting Chair (Mrs. Linda Jeffrey): As you settle yourself: You have 15 minutes to speak to us and I'll give you a one-minute warning. Whenever you're ready to begin, if you could state your name and the organization you speak for. When you're done, we'll be able to ask questions.

Mr. Peter Rosenbluth: Thank you. Good morning, Madam Chair and members of the committee. My name is Peter Rosenbluth. I'm here representing Ontario Nature. We're very pleased to have this opportunity to comment on Bill 173, as well as Bill 191, the Far North Act.

I realize that you've been on the road and will be on the road for a long time, so I thank you for your patience, your interest in the topic at hand, obviously, and your careful consideration of what all of us who are here have to say.

I'll be focusing my comments on the Mining Amendment Act; however, it would be negligent of me if I didn't state first off that both of these acts are of intense interest to Ontario Nature as both of them may have enormous implications for Ontario's wild species and wild spaces.

On August 6, Caroline Schultz, who is the executive director of Ontario Nature, had a chance to speak to this committee in Toronto. She focused her comments on the Far North Act, and I trust that you will consider her comments and consider them as representative of the feelings of myself and our members in northern Ontario here.

Ontario Nature's interest in this Mining Act: We represent and work with 140 member groups across the province, 10 of which are located here in northwestern Ontario. Amongst those groups are over 30,000 individual Ontarians. Our mission is to protect wild species and wild spaces through direct conservation, education and public engagement.

Over the last decade we've begun to work more closely on mining issues and with the mining industry. As an example, during the Living Legacy efforts to disentangle mining claims in protected areas, we worked closely with several First Nations, industry representatives and government to find alternative lands in the Woman River complex of the Algoma district that could be protected within the larger protected area system. We've also long been voicing our concerns about the environmental impacts that come from the piecemeal and uncoordinated approach to mining proposals that are a relic of Ontario's old and somewhat archaic Mining Act.

Our position on Bill 173 is this: Ontario's old Mining Act has been widely criticized for lack of consideration for environmental protection and aboriginal and private landowner interests. While Ontario's mining industry is a world leader in terms of production and exports, it has a long way to go in terms of promoting and engaging in sustainable and socially just mining practices. This current legislative review provides an opportunity to update the rules and bring them up to the standards of modern mining legislation and regulation elsewhere in Canada and around the world. We're therefore extremely happy that this old act is under review, and we are supportive of Bill 173 as a first step. We're hoping that it's a first step that will develop some clarity for prospectors, for industry, for conservation groups, for First Nations. More importantly—and I'll speak to this for the most part today—we're hoping that the final bill will assure environmental sustainability and integrity while it encourages responsible prospecting, staking and exploration for mineral development. So we do want to see that balance, and we are supportive of the balanced approach.

1020

I should stress this fact again: We're supportive of the bill, but as a first step toward modernization. We don't

believe that the opportunity for modernization has been fully realized yet. I'm therefore going to speak about several amendments that I'd like this committee to consider.

First of all, we would like there to be a requirement for environmental impact assessments to be carried out at all stages of the mining process. Currently, mining operations in Ontario, as you are all aware, I'm sure, are exempt from environmental assessment. This is a situation that Ontario Nature is disturbed by and, to speak frankly, we find quite unacceptable, given the significant environmental impacts that mining has.

What we find more disturbing is that the declaration order that has been exempting mining from impact assessments has been extended through a series of regulatory delays for nearly three decades now. Although the Ministry of Northern Development, Mines and Forestry has been made responsible for developing requirements for environmental assessment, we are forced to wonder how high this is on their priority list, given the fact that no requirements have been instituted since 1981.

As I'm sure you've heard repeated again and again throughout the hearings that you've attended, the environmental impact from some mining operations can be devastating. I won't go into too much detail on that topic, as I'm sure you've heard much about that. Nearly every other jurisdiction in Canada and in much of the developed world requires environmental assessment at some stage of mining. Most require it at the exploration stage.

Continuing with this exemption from impact assessment would not only continue to place ecosystems and ecosystem services at risk from development activity, but would also serve to cement the legacy that Ontario has built in terms of dragging its heels on this particular policy. And, I might add, it would run counter to the very goal of modernizing the act in line with what other modern mining legislation has done.

Secondly, we would like to see some detail in terms of obtaining the consent of aboriginal people and requiring free, prior and informed consent.

I should start out by saying that we congratulate you and we applaud the fact that respecting and upholding aboriginal treaty rights has been included in the purpose statement of the act. It is indeed a vital component of the act, and we are glad that you see it that way. This is not only a matter of constitutionally protected legal rights, it's also a matter of right mode of operation and practice.

I'd like to note that the courts in Ontario have held that consultations with First Nations communities must start at the very beginning of the mining cycle. We're aware that consultative procedures will be outlined later in regulatory exercises, so I can only hope that as that goes ahead, there will be a requirement for proper consultation, in line with what individual First Nations have outlined in their own procedures, and that there be some inclusion of the fiduciary responsibility to accommodate within those guidelines.

We're also glad that there will be a conflict resolution procedure that will be developed for First Nations

communities and industries down the road. Again, that's a very positive step that we support. However, the aspect of prevention of conflict may not have been significantly addressed here. Again, we'd like to suggest that avoiding the conflict and confrontation that this kind of procedure might mediate is best done through obtaining prior consent from First Nations. Again, this would also provide greater predictability for mining companies and investors, which is something we've heard directly from them.

Third, the prioritization of land use planning: Bill 173 does allow for the prioritization of land use planning in the far north. We would like to see municipalities have the ability to decide where mining activities will take place within their boundaries as well in the near north. Again, this idea that mining may be the best of all uses of the land is an archaic one, and allowing municipalities to state where mining may be feasible in the first place would save everybody considerable time and agony later.

Fourth, rules for uranium mining: A significant public outcry has resulted from the surge in uranium exploration that has occurred in Ontario recently. There are serious concerns and uncertainties regarding both human and environmental health that go hand in hand with the mining of uranium and other radioactive materials. Again, I'm sure you've heard from groups that have gone into more detail than I will regarding this. This does mean that uranium requires unique rules, and indeed, in many other provinces and jurisdictions, these concerns are addressed either through moratoria on uranium mining or through the impact assessment process. Modernization of the act requires the same kind of oversight that other jurisdictions are implementing with regard to uranium. Bill 173 should include a moratorium on uranium mining until the health and safety implications have been studied or appropriate rules established. This needs to include environmental considerations along with human health, and to consider the option of a long-term prohibition.

Fifth—and this is my last point—mostly because it is a tool that could ensure the first four, is an improved permitting system. Again, if I could start with a congratulations on the current permitting system that has been proposed for exploration, that's a great first step, but a permitting system throughout all phases of the mining process would indeed improve this act. It would ensure that there are environmental, aboriginal and other public interest screens prior to any mining interest being created, and any conflict of interest. Once a claim has been staked, security of tenure can be given through the government, although further permits would be required to explore and to mine as well.

In conclusion, to summarize our position in one message and maybe in one bite-sized piece, a modernized act should reflect the modern-day values about how public lands should be managed. Modernization of the act requires bringing it up to speed and in line with environmental, legal and planning standards that the people of Ontario expect today. These standards have

already been brought in elsewhere in Canada and around the world. In a nutshell, that's our message.

It would be embarrassing to the people of Ontario to have taken this first step towards modernization of the act and then have stumbled before we've taken the second. Ontario Nature believes that there are many components of this act which deserve congratulations. However, there are gaps in both the social and environmental responsibility components, and it now falls on legislators to ensure that these are realized. We believe that these gaps can be plugged with the amendments we've proposed.

That's what I'd like to say to you, so thank you for the opportunity to share our input.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. About three minutes for each speaker, beginning with Mr. Bisson.

Mr. Gilles Bisson: Where to start? That's a lot to put into one presentation.

Mr. Peter Rosenbluth: Just be happy I didn't talk about the Far North Act as well.

Mr. Gilles Bisson: I'll just start at the last point and the permitting. You're saying proper permitting for each stage of the exploration process. I think most people can agree that's not a bad idea, as long as we don't throw the baby out with the bathwater. However, some people have raised to me that if we're going to apply this test to the mining sector, why are we not applying it to all other sectors that touch our natural resources, and, for that fact, subdivisions, building of industry etc.? At what point is the mining sector being treated very differently than anybody else?

Mr. Peter Rosenbluth: Well, speaking on behalf of an environmental organization, if there were a process to screen environmental impacts for any kind of development activity or industry that may have significant environmental implications, such as mining, then we would support that. Of course, not all activities have the same level of impact on the environment and on human health. Mining happens to be one of those activities that we consider to have such significant potential impacts that a permitting system would be something we would support.

1030

Mr. Gilles Bisson: So because this is the Mining Act, you're supporting it for this, but you would see that for all development.

Mr. Peter Rosenbluth: Potentially all developments, but it's a difficult line to draw. It is dependent on the level of severity with which that development may have impacts on the environment.

Mr. Gilles Bisson: Would you agree that the rules around how mining is to take place today, as compared to what was there 30 years ago, grew by leaps and bounds when it comes to the protection of the environment, and also socio-economic—

Mr. Peter Rosenbluth: There have been some improvements. I did note that in the last 30 years, those improvements have not included a requirement for en-

vironmental assessment despite the fact that most other jurisdictions in Canada, perhaps all, have.

Mr. Gilles Bisson: Are you aware of the agreement, the IBA, signed by Attawapiskat, Fort Albany, Kashechewan and Moose Factory with Victor, the De Beers group?

Mr. Peter Rosenbluth: No.

Mr. Gilles Bisson: Because it takes into account all of that.

I guess I just want to make a statement at this point. I understand where you're coming from and there's a lot of sympathy, but to say that we need to revise this Mining Act because it's so old that it doesn't work doesn't recognize that there were already some good players in the field who have started to do the type of stuff that government should have been doing 30 years ago.

For the record, there are some bad players out there, and we've seen that with the KI situation. Apparently, it's about to surface again because they're going back in, from what I understand. But there are some players out there who have actually done some pretty good work both when it comes to protecting the environment and protecting the socio-economic situation with communities such as Attawapiskat. It may not be a perfect deal, but it's one that 85% of the community ratified. I guess what I would call for—I'll just close on this—is that we need to have some legislative framework that makes this happen as a matter of course and not just a negotiation project by project.

Mr. Peter Rosenbluth: I would agree completely with that. And we have worked with some companies that have been pretty outstanding.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown.

Mr. Michael A. Brown: I appreciate the conciseness of the presentation. Not all manage to put their views forth in a relatively concise way so that we understand.

Because of some of the comments made at the hearings last week, I'm interested in your comments with regard to uranium, knowing that half our electricity comes from the use of uranium, that we have refineries for uranium in the province of Ontario and the government does not appear to have any interest in stopping that. I am wondering, though: Are you speaking to the staking and exploration for uranium or the actual mining? Because the mine itself comes under the federal jurisdiction.

Mr. Peter Rosenbluth: No, I realize that exploration is currently under provincial jurisdiction, and it's the aspects of exploration—the drilling of holes, the trenching—for which there may or may not be environmental and health concerns. That is kind of the point that we're getting at, that there just has not been enough research to determine if even that level of impact or intrusiveness may result in things that we should be concerned about.

Mr. Michael A. Brown: The question that flows from that that I asked in Toronto is, practically, how do you know—a mining company, an exploration company, a developer or a prospector does not need to say what he or

she is exploring for. As a matter of fact, sometimes they're surprised at what they find. They may find something entirely different than what they originally set out to look for. So how would you have a moratorium on uranium exploration when the explorer—whoever was doing it, whether it's a prospector, a junior, whoever—may be exploring for gold and find uranium? How do you know?

Mr. Peter Rosenbluth: That's a very good question. It's a difficult one, but of course it's one that other jurisdictions have grappled with as well and have come up with various methods for dealing with. Again, there may be other groups who can speak more specifically to what they've done than I have, but from what I understand, it may be possible to put a moratorium on exploring specifically for uranium.

As you say, often people don't know what they're going to find until they begin exploration. There are systems in other provinces where, once exploration has begun, although it may not be for uranium, if concentrations above a certain amount have been found, they can be reported or they must be reported to government, and at that point there may be other provisions within legislation that have to do with whether or not exploration can continue beyond that point.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Hillier.

Mr. Randy Hillier: I just want to go through a couple of these amendments. So you're proposing an amendment that would—or Ontario Nature recognizes that local decision-making will be the best way to protect the environment on land use—I think it was (d): land use planning.

Mr. Peter Rosenbluth: Yes. Local land use planning may not be the best way to protect the environment. Of course, municipalities can decide to do whatever they want with the land: That's up to them with regard to the Planning Act. It may not be the best protection for the environment, but it will provide certainty to mining companies, to others, and it will give those municipalities the chance to determine what the best use of the land is. We feel confident that many of them will consider environmental factors when they make those decisions.

Mr. Randy Hillier: Right. And again, that would be throughout the whole province: municipalities, First Nations communities, northern Ontario, near north, whatever.

Mr. Peter Rosenbluth: We do understand that, of course, and I think this issue was brought up with past presenters. There are different circumstances that are brought about, often through former legislation, treaties, things like that, in different parts of the province. In southern Ontario, because municipal plans are updated so regularly—this may not be feasible in the near north, and certainly in the far north, as has been laid out in this plan, we think it is.

Mr. Randy Hillier: Have you any clear examples about this uranium exploration as well, because that's been raised. If people knew what was there, they

wouldn't be exploring. That's the whole essence of exploration: Looking for things that are not known. There are some jurisdictions that have a moratorium on—I'm not sure if it's on uranium mining or uranium exploration. Do you have any clear examples of prohibitions on uranium exploration in this country?

Mr. Peter Rosenbluth: I can't answer that question directly, but—

Mr. Gilles Bisson: Nova Scotia.

Mr. Peter Rosenbluth: Nova Scotia, I believe, does. There's a report that has been published by Ecojustice: *Balancing Needs, Minimizing Conflict*. There are a few examples given in here, and right now I can't remember the detail with which they go into each of these cases.

Mr. Randy Hillier: You wouldn't know of the consequence or the impact on other mineral exploration since they've implemented that moratorium on uranium mining?

Mr. Peter Rosenbluth: I'm not aware of that right now, no.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Thank you for being here today. We appreciate it.

NORTHWESTERN ONTARIO PROSPECTORS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Northwestern Ontario Prospectors Association. Is it Mr. Bjorkman? Is that right?

Mr. Karl Bjorkman: Yes, Bjorkman.

The Acting Chair (Mrs. Linda Jeffrey): Welcome. Thank you for being here. You'll have 15 minutes to do your presentation, and if you get close to the 15-minute mark, I'll give you a one-minute warning. At the end there'll be an opportunity to ask questions. If you could state your name and the organization you speak for, for Hansard. Once you begin, the clock will start.

Mr. Karl Bjorkman: Okay. Thank you, Madam Speaker, and thank you to the honourable members here and thank the Lord for a great day in Thunder Bay; it's sunny out there.

I usually like to talk, but I had to write this stuff down, so I'll mostly read.

My name is Karl Bjorkman. I'm a prospector/claim staker living in northwestern Ontario. I'm here partially on behalf of the Northwestern Ontario Prospectors Association and partially here for myself.

I would like to thank the government for the opportunity to participate in these hearings and in the democratic process. My adult children, my wife and I all make our living working in the mineral exploration industry. I have two daughters in school now, going to university to be geologists, and the rest are prospectors. So I have four girls and one boy working as prospectors out in the field. They've been working for about 15 years.

I would like to break my presentation into four topics. The first—I'll just skip this paragraph here. Topic one is, I believe in the distribution of wealth in society and I

believe in protecting the environment, and I think most prospectors do; they work close to the ground. However, what is sometimes forgotten in this effort to further remove ourselves from having any footprint, or any non-native footprint, on the land is that something has to generate the dollars to pay for the social system we have come to enjoy.

1040

Something has to pay for our obligations to the First Nations peoples. In this country we have manufacturing, mining and forestry. We have a lot more, but we have those three big ones. I believe the Far North Act removes too much land from exploration and without the approval of the very people who live there, being the First Nations people. The amount of land that would be disturbed in the far north during the search for minerals is small compared with the devastation in the far south caused by urban sprawl and projects like the expansion of Highway 69. It seems unwise and unfair to remove such a large piece of Ontario from the possibility of generating wealth for both the First Nations and the coffers of the Ontario government.

Considering the proposed changes to the Mining Act, why fix something that is not broken? Ontario has been a blessed province and the envy of many when it comes to our mineral exploration industry. The government has to be very careful when it considers sweeping changes to the Mining Act that may scare off the very investors who pour money into our province, so I guess it would be nicer to have smaller changes and in small increments.

The next topic is the idea of mandatory First Nations consultation. Here again, I'm coming at this a lot from the point of view of a prospector. We go out with a hammer and a packsack, and the footprint on the ground is minimal. The idea of mandatory First Nations consultation for us as little prospectors seems unfair. I'm not against it for large things or for trenching or for big things. I'm just a prospector, not a miner. I've never worked at a mine. What I mean is, I'm not going to sink a shaft, turn a drill or dig up any ground with my own money; I'm just a prospector. The chances of the ground I walk becoming a mine is only one in 10,000 and only if I first find a showing. If I stake a piece of ground, it would only seem natural that I'm going to walk on it. Why do I need a permit or someone's permission to do this? I use my own money to prospect for myself. I do not have a person hired on to do the consultation for me like a corporation might. When I hear how all the different First Nations communities have different methods that they would like to be conducted with, like this morning—and it's very good and I have no problem with that, but I feel that as a prospector I should be able to stake a piece of ground and the government should know that if I stake that piece of ground I'm going to walk out there with a hammer in my hand, and if that's all I do I don't think I should have to go in and contact everybody to do this. I might have dozens of properties around Ontario, and if I can't go for a Sunday drive and go with my wife with a little hammer and take a look I think it's

almost ridiculous, whereas when you're going to take a backhoe with you or take a diamond drill with you, that's different. It puts us at a disadvantage when you consider that our competition—or the people who might hire us sometimes but a lot of times are our competition—may have a whole department dedicated to this, and what am I going to do? I'm just one guy.

If this act is passed into law it will be the lowest-paid people in the industry who will suffer the most. I don't mind getting a permit to bring in a backhoe or a bulldozer, as I said, but why would you make me get a permit for going for a walk? Are we going to make fishermen do this? How about berry pickers and photographers? Why are we picking on the prospectors? Many elderly prospectors and some who don't know how to use the computer will be at an extreme disadvantage. This includes many First Nation prospectors. This, of course, will favour the large companies and discriminate against the little guy. Prospecting is a traditional, historic job which has been here for thousands of years. We, the prospectors, do not want to have further paperwork other than getting a licence and recording our claims. If we're going to do more than boot-and-hammer work or if we sell our ground to a junior mining company, then we are more than willing to get a permit.

Next is number three, map staking. I don't know who wants map staking but it isn't the prospector; that's for sure. Prospectors make money in the summer by prospecting and staking for other people. They also stake for themselves, and if they get lucky they make some money selling these properties. In the winter, they—we; I—survive by staking claims. It is very hard work and we do it in all weathers. We live and work close to the land. We also find mineral showings while staking claims because we are forced to go in a straight line through the worst swamps and thickets. That's why we sometimes find things that other people haven't found: because we have to go there; we have no choice.

Oftentimes the land is only looked at when it is staked. It is not that we won't be able to stake for ourselves under the new rules; we will. I'll be able to map stake just like anybody else, that's true, but I won't have any money, come spring, to do it with, and that's my worry: The little guy doesn't have that money. Big companies have flow-through shares. Big companies use other people's money, shareholders' money, but little prospectors have only got their own and if they can't stake claims and make some money—and staking is good work, it's good money, and if you can't make money during the winter, then come summer, you may not be there in our industry.

Most of us are independent contractors and there is no program in place to supplement our income. We do not qualify for EI. Why, I ask, is the government taking our jobs away? Many prospectors will not be able to survive the winter and will have to leave our industry. They may never come back. Prospectors have found their fair share of mines over the years and we are losing a valuable resource, and for what? You are not hurting the big companies with this one; just the little guys.

People use staking in order to enter the exploration industry. Even without an education, a young man or woman can work hard at staking during the winter and then be there to prospect in the summer. If you add the advent of map staking with the burden of First Nations consultation on the prospector—and I want to make sure it's clear; I'm just talking about the prospector here; I'm not against consultation at higher levels—then you can see how the most vulnerable people at the lower end of the pay scale are going to be hurt by this bill.

Last is number four, suggestions for Bill 173. The mineral exploration industry needs clarity and secure land title in order to bring dollars into the province with the ultimate goal of opening new mines. We understand the need to respect and often accommodate the First Nations and surface rights holders. Again, we need clarity: clarity of process, permitting, licensing, etc. This includes clarity in dealing with the First Nations. We need to define “consultation” and we need one law in which we can all fall back on when there's a disagreement. If we want dollars invested in Ontario to pay for our social systems and our way of life, we must provide a stable, clear, repeatable way of obtaining lasting tenure to our mineral rights; otherwise, investors will seek other places to invest where the environment is not protected and the rights of workers and citizens are second-rate.

Concerning consultation, one suggestion I first heard from Jon Baird at the PDAC is to make all consultation agreements public information. This would go a long way to alleviate the fears that some may have of unfair play or corruption at either end. An open policy where the general public, company shareholders and the First Nation peoples—those living in the towns and villages, not necessarily the leaders—can keep an eye on both sides of negotiation will build trust and better relationships in our industry.

Concerning prospectors, I suggest leaving the present system of staking in most of Ontario where there is crown land. I also live on a piece of bush out 20 miles from town and I don't have my mineral rights either. I got into this industry because someone walked across my grounds on a Sunday while we were having a hot dog, staking claims through my yard. So I've been there; I know how that feels. There are some bad apples out there, but most of us try to do a good job. Like I say, if we could leave the staking the way it is where there's crown land, it would be nice.

If we must go to map staking—and I hope we don't—as the government says, “There are too few stakers to worry about.” I don't think that's true, but if that's the case, then I suggest that a scholarship fund be set up or some kind of fund to get into some other business because there's nothing there for us. Most of us are independent. We can't go on EI.

I would suggest that the prospector be given special rights concerning consultation, and I appeal here to the government and to the First Nations people that they give us a bye, that they give us the right to go just with our hammers when we stake ground to prospect. We're not

going to damage the land. I think we're a lot on the same level. I think we should not have to consult in order to boot-and-hammer prospect. Ontario used to be a place where the young and ambitious and poor could go prospecting in the bush, find something new and go rub shoulders with the rich developers in Toronto. This is how the Prospectors and Developers Association of Canada started, I think. It's sort of like the little guy's dream of trying to make it. Please don't ruin this entrepreneurial dream.

Lastly, I would like to acknowledge the efforts of various groups in the past who have brought due pressure to bear on the government of yesterday to introduce the laws we have today that protect our environment and workers, and give us a platform of which we can boast in Ontario. The key is to recognize when we have a fair balance and not let the pendulum swing too far. We need the money generated by forestry, mines and manufacturing to sustain the social system for us and our children that we have all come to enjoy. Remember, if it's not broken, don't fix it. We can accommodate most of the First Nation concerns about the mining industry with minimal changes to the act, I think.

Thank you, and have a good day. That's my written presentation, at least.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about three minutes for each group to ask questions, beginning with Mr. Brown.

Mr. Michael A. Brown: Thank you for coming. I appreciate your presentation. I will start out by pointing out that the act, as it's written at present, and it is only out for public hearings right now in second reading, does not require that prospectors do anything other than what they're doing now, provided they're doing the boot-and-hammer, as you describe it, prospecting.

1050

Mr. Karl Bjorkman: Okay; well, that's good.

Mr. Michael A. Brown: So as it's written today, that is the way it presently is described, so you do not have to have a consultation before you go prospecting. After that, you do, if you are in an area in which the First Nations have an interest.

I want to say that we also appreciate your concerns with map staking. We intend to phase in map staking across the province as we get a handle on how to do it in a way that makes sense, a made-in-Ontario solution to map staking. We are aware that there are, I think, four other provinces that do it. We have lessons we can learn from them on how that is to happen. In those provinces, we are told, there has not been a detrimental effect—that's not to say there hasn't been some—on prospectors. We can just look at their experience.

Our interest as a government is to ensure that we discover and, hopefully, develop the mineral wealth of this province and develop mines. The first step of that is you guys and gals.

Mr. Karl Bjorkman: Well—sorry.

Mr. Michael A. Brown: No, if you've got something—

Mr. Karl Bjorkman: We are a very small percentage. Even of the mineral exploration industry, we're still a very small percentage. But we are the people who find the showings. We don't find the mines and we don't—we need the rest afterwards but, yes, if we're not there. It's not going to affect part-time prospectors who might have a job, who might work at a sawmill and only prospect part-time, the same way, but for full-timers it is detrimental. I'm going to survive; it's not going to be doomsday for me. I've been around this business long enough. But younger people coming in, or my children, may have a tougher time transitioning when the winter work is gone because there is really nothing to do in the winter if you don't stake claims. It's tough.

Mr. Michael A. Brown: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette?

Mr. Jerry J. Ouellette: Thank you for your presentation. I carry my claim tags in my truck everywhere I go, and my hammer under my seat, just in case, because you never know.

Some of the concerns that are coming forward are predominantly from southern Ontario—and I think they have to deal with the trenching issue—from a lot of individuals who own properties and all of a sudden people are showing up and trenching. Do you think there's some compromise that could be found there to deal with this trenching issue on private property, or a notification to go on properties? From your perspective, what might be a possible solution in that area?

Mr. Karl Bjorkman: Yes, for sure—trenching on private property may be one area where the act has been too strong. I think it only required notification before. Yes, I mean, permission is a good thing. I think that's fair.

At the same time, we have to remember, and I don't know if the public is made aware, that a lot of the ground that is now private and has no mineral rights, such as mine—my neighbour quit paying the mineral tax before I got there. Why, I don't know, but he gave that up. Oftentimes people have sold them, so they've made a profit. The previous owner, or maybe the farmer, maybe Grandpa, sold the mineral rights. They had them, it was a commodity, and someone along the line decided to sell them at a profit. And then, 50 years later, they're like, "Well, this isn't fair. We don't have our mineral rights." Education would go a long way in those cases, I think, and the same with—it's too late now in southern Ontario because the die is cast, I think. But had lawyers had to reveal that you had mineral rights at one time but someone sold them a long time ago, that would have done a lot with the transfer of plans, so people would know: "Hey, someone got rid of these." It's not the crown's fault; it's not the prospector's fault. That's important.

Mr. Jerry J. Ouellette: Yes. I think in southern Ontario there have been a lot of problems in what's taken place and understanding, regarding the mineral rights, where municipalities wanted to open up cottage country

for other seasons and freed up the lands, yet retained the mineral rights at that time because they viewed mining and the forestry sector as key industries within their communities. Now those same communities are saying, "Well, wait a sec here. This is causing a lot of problems now," because it's gone in a full circle, so it's come to a point now where people are opposing it.

A last quick question would be, do you know the reason why there is so much staking taking place in Reeve Harding's municipality?

Mr. Karl Bjorkman: No, I don't. I've fallen out of the loop for the last week or two because we're on other projects. But probably somebody's found something somewhere. I would think it's more that than being tied to the Mining Act. Because it's a few years off, I don't think anybody's afraid yet that things are going to change. So I think probably, somebody's found something and things have gotten zoomed because of that. That's my opinion.

Mr. Jerry J. Ouellette: We're just trying to answer the question.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: I understand your issues around staking and, quite frankly, share your concerns. But just for the record—you've said this, but just to be clear, what you're saying is, "Allow me the ability as a prospector to prospect with minimal disturbance to the ground," and then there would be a requirement—and you're in favour of this—for both consultation and permission to go to the next step in responsibilities taken if any damages are done.

Mr. Karl Bjorkman: Yes, I think it should be staged and equal to the damage that's going to be done. I think the government, at the beginning—this is where there could be a compromise between who has to consult, the crown or the company? At the beginning, the crown could say, "Hey, Karl Bjorkman just staked a claim here on your ground. He'll probably be in there with a hammer someday. Maybe he won't, but maybe, within the next two years, he might walk your ground with a hammer in his hand." If it gets more than that, there may have to be a notification: "Hey, do you guys have a problem with us putting a little strip here, a little something? Do you mind this? We found this. What do you think?" As it gets further up, where they're going to strip a huge area and bring crews in, it's got to be more consultation, of course.

I think openness is so important. I think with consultation, it's important, like I said, for building trust so people on both sides can't say, "Oh, I heard this," and a big story rushes through the town: "Hey, there's going to be a mine there"—well, no; someone's out there, maybe with one diamond. That doesn't mean there's going to be a mine. So if there was this openness both in consultation and in First Nation cultural sites—if they were on a map, it would be so much easier. The trust would be there on both sides. Who wants to walk into someone's culturally significant area? I don't want to. I don't want to hurt

people. I respect those people, so I don't want to disturb anything that's theirs and that they hold dear.

Mr. Gilles Bisson: I'm going to ask you to speculate on something in regard to map staking. The Hemlo was found in the early 1980s by John Larche and Don McKinnon, who were prospectors on the ground with the hammers, as you say it. If we would have had map staking at that time? Who knows what would have happened after with technology? But if they had not gone on the ground, would that mine have been found?

Mr. Karl Bjorkman: In that case, yes. Because it was already a historic discovery, I believe they would have gotten the ground through maps. Their idea was to get in there and stake this off. The difference would be the amount of dollars generated; I'll say that. Had Hemlo been map-staked—let's just hypothetically say there were no claims there when they walked in there—and they went up to a company and said, "Look, we've got this great idea. You guys are going to drill here, and on your 69th hole, you're going to hit it big." Okay. So they go in there—and they would have taken a huge area, and that one company maybe could have raised \$20 million on the stock market. Who knows? But the way it happened, and then the subsequent staking rush, it fragments the land. Maybe big companies don't like fragmentation, but in our industry, it's that fragmentation that actually produces more money, because the sum total of 20 companies raising money on the stock market for little parts of ground is way bigger. They can raise way more money than one company having this huge piece. No one company could raise what the sum total of all these could make. And then when these guys only have a piece of ground over here, five kilometres from the main showing, and they drill it, that's the only piece that they can work on, so they have to work on it.

Mr. Gilles Bisson: Does it lead to more exploration?

Mr. Karl Bjorkman: Absolutely, because company A, which takes all the ground, is going to focus right on the main showing. The other way, with the staking we have now, you get what you get, and maybe you find it five kilometres away, and it might not have been found there.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Bjorkman. We appreciate you being here today.

KITCHENUHMAYKOOSIB INNINUWUG

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Mr. Sam McKay, councillor for KI.

Welcome. Mr. McKay? Is that right?

Mr. Sam McKay: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Welcome. You have 15 minutes. If you could state your name and the organization you speak for at the beginning. Then you'll have 15 minutes, and afterwards there should be an opportunity for questions. I'll give you a one-minute warning if you go over the time.

Mr. Sam McKay: My name is Samuel McKay. I'm from Kitchenuhmaykoosib Inninuwig.

The Acting Chair (Mrs. Linda Jeffrey): Could you speak a little closer to the microphone?

Mr. Sam McKay: My name is Samuel McKay. I'm from Kitchenuhmaykoosib Inninuwig. I'm just going to read the presentation.

1100

It is unfortunate that the Ontario Standing Committee on General Government could not accept my invitation to Big Trout Lake. My community invited you to our community because we feel it is important that this standing committee should visit us because of the impact your decision will have on our community, a fly-in community in the north.

As remote aboriginal communities who intensively use our traditional territories, we are the ones who will suffer the most serious impacts. Mining prospectors are focusing in on our territories and are staking and doing exploration without our prior informed consent. The far north, as you call it, is where we live and what we know.

The UN Declaration on the Rights of Indigenous Peoples stipulates indigenous free, prior and informed consent not only to any development that will affect our territories, but also, specifically, to any legislation that will affect us. The timetable for Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North, is too short, and the failure to visit fly-in communities and any communities in what the Ontario government is attempting to designate and regulate under the Far North Act is further evidence of the failure to understand the concerns of our indigenous peoples. We reject both draft bills in their current form because they fail to substantively address aboriginal and treaty rights in regard to mining and land use planning.

Under the existing Mining Act, the Kitchenuhmaykoosib Inninuwig council went to jail for standing up for our aboriginal and treaty rights. We are known in the popular media as the "KI 6." We went to jail because we do not want Platinex to engage in any mining exploration or mining activities in our indigenous territory, because it will destroy our land and take food from our table. We are committed to peacefully defending our fundamental human rights as indigenous peoples. We are one with the land.

Our concepts of preserving Mother Nature are more powerful than the approach of the Ontario government to promoting mining activities for mere profit. We are one with the land, we depend on it to feed our families, and we have thousands of years of intergenerational experience with how to live in harmony with the land and preserve it, not destroy it in a few years.

We have two very different concepts of development. That is why the Mining Act was used to put us in jail. That is why we were prepared and did go to jail. The legislative changes that we are considering here today must get us beyond the use of physical force as a means of getting your way. Public opinion and the courts have asked us to seek out mutually agreeable solutions that balance our respective rights and interests.

We need to resolve this fundamental conflict. This standing committee must understand that our inextricable link to land is inalienable. We have lived in our territories, what you call the far north, since time immemorial, and continue to live there as a matter of choice, a choice that has to be respected and valued by non-aboriginal people.

We cannot be racially discriminated—we have much more knowledge about our territories than any settler or scientist will ever be able to acquire, and we are only indigenous to our own territories.

Protecting our territory goes beyond the Eurocentric concept of property. We look beyond ownership and revenue-sharing, and look at protection of our lands as a responsibility to protect the land for all living beings, including animals and trees. We look at protection as the preserving of our land, in its present condition, for future generations. We do not believe in cashing in our resources at the expense of future generations.

We have just received letters from the Platinex and De Beers corporations. Platinex is scheduled to come to Big Trout Lake on August 25, 2009, to embark on a campaign to attract international investors to invest in their proposed mining activity at Kitchenuhmaykoosib Inninuwug.

We sent a letter to the Honourable Michael Gravelle on July 30, 2009, telling the minister that we need to specifically meet on this ongoing conflict or we are going to be in the same trouble we were in last year. We want to follow what the Ontario Court of Appeal asked us to do, and that is to negotiate and find a mutual solution. We have not received any answer from the Ontario government to this letter.

In their letters, Platinex is accusing the government of irresponsible governance, arguably to set up claims against the government. Rather than ignoring the issues and pretending that silence is consent to mining activities and letting mining corporations push their agenda, the government should stand with us and implement the internationally recognized requirement of free, prior and informed consent of indigenous peoples.

In regard to the letter from De Beers of Canada, our council agreed to their request to meet on August 24, 2009, in our territory. It is clear that the mining industry realizes that on the ground they must develop a working relationship with indigenous peoples. In the Platinex case, they are fairly clear that they would not like any conflict to happen, but that they want to continue to promote their interests, including the tour of prospective investors, if necessary by engaging the Ontario Provincial Police and the Ontario courts. They understand that any kind of altercation could result in investors losing interest in investing in Platinex. Mining companies understand that economic certainty is contingent upon good working relationships with indigenous peoples, despite what may or may not be contained in legislation.

These letters underline the urgency of the issues we are discussing here today. What Platinex and my community do on August 25 will be significant. Platinex and

my community were part of the reason Ontario has decided to amend the Mining Act. The real question is, will the proposed Mining Act amendments address the Platinex and Kitchenuhmaykoosib Inninuwug problem?

When the Ontario government announced that the Mining Act was going to be amended, we understood the necessity but we were also very cautious. We know from experience that the federal and provincial governments do not recognize aboriginal and treaty rights because they want to maintain the existing mutually exclusive jurisdiction between the federal and provincial governments. The proposed legislation maintains the unilateral decision-making power of the minister. Aboriginal and treaty rights are treated more as a burden on provincial jurisdiction and at the total discretion of the minister, despite the fact that we as indigenous peoples have our own jurisdiction and rights over our territories that are not substantively taken into account in the legislation. Kitchenuhmaykoosib Inninuwug does not accept or endorse Bill 173 and Bill 191 in their present form. Substantial changes must be made to bring the legislation in line with the minimum standards set out by the courts and in the UN Declaration on the Rights of Indigenous Peoples before we will even consider accepting or endorsing these pieces of legislation.

Canada and the provinces must recognize aboriginal and treaty rights. This will fundamentally change the distribution of power between Canada, Ontario and indigenous peoples. Ontario does not propose this to happen in Bill 173 or Bill 191. The province still claims 100% power and control over our territories. Aboriginal and treaty rights are not taken into account and just referred to as interests with limited procedural guarantees, but no substantive recognition.

When Kitchenuhmaykoosib Inninuwug examined Bill 173 and Bill 191, we looked toward seeing if it contained any solutions for the kind of problem we have with Platinex. These bills do not give us any solutions for these kinds of fundamental problems. Recognition of aboriginal and treaty rights means that the provincial ministers cannot maintain unilateral power over decisions that will ultimately undermine our aboriginal and treaty rights. What you call the “far north” is not the far north to us; it is our home. We need real participation in decision-making, based on the principle of free, prior and informed consent, otherwise our objections to mining planning will cause ever-increasing economic uncertainty for the Ontario economy. This level of economic uncertainty is the consequence of us standing up for our aboriginal and treaty rights. Ontario has shown some understanding of this connection, but we must now develop it into a legislative framework that we are satisfied with or the problem will persist.

Canada and Ontario cannot rely on mutual exclusivity or 100% control any longer. The courts have rendered very strong and clear decisions that aboriginal and treaty rights must be taken into consideration. This means that recognition of aboriginal and treaty rights proportionately diminishes federal and provincial powers as aboriginal

and treaty rights are recognized as being paramount to federal and provincial jurisdiction. That is what we are trying to define here as we are considering Bill 173 and Bill 191. The people of Kitchenuhmaykoosib Inninuwug know that Bill 173 and Bill 191 are totally inadequate in regard to protecting our aboriginal and treaty rights as defined in subsection 35(1) of the Canadian Constitution, 1982.

1110

Subsection 35(1) gives Kitchenuhmaykoosib Inninuwug the power to address any provincial legislation that impacts aboriginal and treaty rights, plus it obligates the Ontario government to take our concerns seriously. Subsection 35(1) establishes in constitutional terms the dynamic relationship that exists between indigenous peoples and the Canadian and provincial governments. Provincial mining activity and recognition of aboriginal peoples' land use planning are very key areas which impact our aboriginal and treaty rights.

Kitchenuhmaykoosib Inninuwug, as stated before, rejects Bill 173 and Bill 191 and asks that the Ontario government devote more time and energy to resolve this conflict. The urgency and importance of these bills are evident in the conflict we face with Platinex. The mining industry is looking for leadership. Trying to sweep this thorny issue under the rug will not work. We need to find mutually agreeable solutions. Aboriginal and treaty rights must be recognized.

For example, amendments to the Mining Act must not only reflect Ontario government values in terms of restricted lands. Restricted lands must include our indigenous values and activities. Restricted lands need to take into account our aboriginal and treaty rights. It is imperative that Ontario recognize and affirm our aboriginal and treaty rights and substantively establish parameters to engage in land use planning in our indigenous territory.

We fully sustain ourselves on the land. We depend on ecological biodiversity. That is why our land use planning has always been to protect our land from permanent destruction. It is our land use planning and utilization that has made the 225,000 square kilometres available for Bill 191 to allocate to be protected under that legislation. In this regard, Bill 191 is less than adequate because it does not recognize aboriginal and treaty rights as being the real basis for all decisions in our territory.

Good land use planning in our territories is really contingent on good indigenous-based land use and occupancy research being done. Kitchenuhmaykoosib Inninuwug is presently organizing indigenous land use research. We have engaged Mr. Terry Tobias, who is a nationally and internationally recognized expert in this area, and he is appalled at how the Ontario government is trying to make our research superficial. We will be having a meeting with Ontario on August 17, 2009, to discuss this matter, and hopefully Ontario will understand that this kind of research is very complicated and takes time to do if we really want to preserve the ecological biodiversity that Bill 191 proposes to protect.

Kitchenuhmaykoosib Inninuwug did provide an independent submission on October 10, 2008, before this legislation was drafted into Bill 173 and Bill 191. We set out our fundamental principles; international law; how current federal and provincial policies violate KI rights; Ontario Mining Act and policies, specific elements of Ontario's mining review, and KI principles regarding mining exploration.

We have not been and will not be silenced about protecting our rights. We have gone to prison to emphasize our commitment to our rights that have been ignored by the Canadian and Ontario governments. We know that our legitimate concerns do have real value and do contribute to protecting our environment for the future benefit of all Canadian and Ontario citizens. This is the responsibility of indigenous peoples. This is the manifestation of what recognition of aboriginal and treaty rights means from our perspective.

We have also made submission to the—

The Acting Chair (Mrs. Linda Jeffrey): Mr. McKay, you have just over a minute left.

Mr. Sam McKay: Okay. I'm just going to do the conclusion.

Despite the fact that we do not support Bill 173 and Bill 191 in their current form, we understand the need for legislative reform. The present Mining Act, with its free-entry system, fundamentally violates our human and indigenous rights. We need to move forward. Ontario must recognize aboriginal and treaty rights in a substantive way. We need to learn how to coexist. We want to protect our territory for future generations. Our values and links to the land are why Ontario can allocate the 225,000 square kilometres as a protected zone.

We know that any changes to the Mining Act and land use planning in the far north will be long-standing. We therefore need to get it right. We need to start by giving indigenous peoples real participation in creating these laws because they directly affect our aboriginal and treaty rights.

There is no easy answer to the problems we face, and we need to understand that we must balance the difference between two very different concepts. We must recognize aboriginal and treaty rights in terms of protecting the environment as having as much value as developing mines and creating jobs. We will not accept being marginalized. Where development is agreed to take place, it must be according to social and environmental standards we set, and with fair and just revenue-sharing agreements.

We have a lot of work to do and I hope this standing committee accepts this challenge. We can establish a new record here in Canada and the world or we can just waste our time. The choice is ours.

Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Exactly; perfect timing. Beginning with Mr. Bisson, you have about a minute and a half.

Mr. Gilles Bisson: You were saying that Platinex is back again. I take it they're not changing their ways, is

what you're saying. They're prepared to go ahead and, if need be, use the courts and use the police to enforce. So we can expect we may be back where we were before.

Mr. Sam McKay: Exactly.

Mr. Gilles Bisson: The experience with De Beers is different, is that what you're saying in your submission?

Mr. Sam McKay: They've been coming to KI, approaching KI through various forms over the years. I did personally meet with De Beers representatives in March. They want to sit down and do things right. That's what they've told us.

Mr. Gilles Bisson: So they're taking the example as what they did in Attawapiskat; nothing goes forward without your consent.

Mr. Sam McKay: Yes.

Mr. Gilles Bisson: So that's what this legislation should be all about, the long and the short of it.

Mr. Sam McKay: Yes.

Mr. Gilles Bisson: Okay. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Government side; Mr. Brown.

Mr. Michael A. Brown: Thank you for coming to see us today. It's an important part of our learning experience that you're here. We really appreciate that. I just want to say that Minister Gravelle has been meeting with your folks. The chief, I know, met with them in the middle of July, and our staff is continuing—the Ministry of Northern Development, Mines and Forestry staff have been meeting, I understand, on a regular basis with people from the First Nation.

We had before us—I'm just throwing this out because it happened not too long ago. The Ojibways of Pic River were here. They are about to provide us with a 14-point process for the correct consultation with their First Nation. Does one exist for your First Nation, a protocol about what consultation—not in the government's view, but in your view, how it should take place?

Mr. Sam McKay: We have a copy of it. We do have a protocol in place and that was never taken into consideration throughout this whole process with Platinex in Ontario; it was disregarded.

Mr. Michael A. Brown: Okay, so the ministry has—

Mr. Sam McKay: It does exist for us, yes. It was provided to Ontario before.

Mr. Michael A. Brown: Okay. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much, Mr. McKay, for your presentation. I think some of the difficulty is the understanding of the differences in many communities in Ontario. I just want to ask you a couple of questions to give people a sense of understanding a little bit better. What is the price of gas per litre in your community and how much is a bag of milk, and how do you get it there?

Mr. Sam McKay: Gas is \$2 a litre.

Mr. Jerry J. Ouellette: Two dollars a litre.

Mr. Sam McKay: I don't know how much milk is; I don't drink milk.

Mr. Jerry J. Ouellette: How do you get the gas there?

Mr. Sam McKay: Winter road.

Mr. Jerry J. Ouellette: By winter road. So all your gas comes in, depending on the weather, for the entire year, in about a month, a month-and-a-half period.

Mr. Sam McKay: Yes.

Mr. Jerry J. Ouellette: I just wanted people to gain an understanding of that for those who will be listening to this. I know my colleague has some questions.

Mr. Randy Hillier: I know there's been a lot of discussion and disappointment about Bills 173 and 191. Going back to early in your presentation, there's a mention in here that we need to resolve this fundamental conflict. It wasn't clear to me. Is the fundamental conflict the consultation approach or just what exactly is the fundamental conflict and what is the solution to that conflict? It was on page 2 of your presentation.

Mr. Sam McKay: I think the fundamental conflict is the difference of land use.

Mr. Randy Hillier: Of land use.

Mr. Sam McKay: And also land preservation, and I guess in resource development.

Mr. Randy Hillier: Now—

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry, Mr. Hillier; you've run out of time. Thank you, Mr. McKay. We appreciate you being here today.

Mr. Sam McKay: Thank you.

COMMON VOICE NORTHWEST

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Common Voice Northwest, Gwen Garbutt. Would she be here?

Welcome. As you get yourself settled, you'll have 15 minutes to present to committee with five minutes for questions afterward. If you could state your name and the organization you speak for; if you get close to the end of your presentation, I'll give you a one-minute warning. Okay?

1120

Ms. Gwen Garbutt: Thank you. I'm assuming the mic works by itself every time I speak, yes? Okay. Thank you for the opportunity for Common Voice Northwest to present to you on the Mining Act and the Far North Act, two vital pieces of legislation from your government that you have chosen to bundle together for the purpose of public hearings across Ontario. My name is Gwen Garbutt and I am the secretary-treasurer of Common Voice Northwest. Vacation and travel time made it impossible for other members of the executive to join me this morning.

First, let me briefly describe who Common Voice Northwest is. Our role is to identify, promote and develop economic opportunities in and for northwestern Ontario. We are made up of the leadership of the region: municipal, business, labour, post-secondary education, school boards, training boards and the multicultural and immigration community.

Let me now turn to your mandate. We want to state categorically that combining these two bills for public consultation is unacceptable. They are stand-alone acts and should be treated as such. Both are extremely important to the economic and social future of northern Ontario, and you need to provide adequate time for their review and comment as separate pieces of legislation. They were not tabled as an omnibus bill so they should not be treated as such when it comes to consulting with the people of the north.

That being said, we find it shocking that at a time when all of us have been extensively engaged in the Grow North exercise, your government has chosen to introduce legislation that will control the future of a massive part of northern Ontario and then expect us to tell the legislative committee of all of our concerns in 15-minute presentations in the middle of the summer. What happened to your commitment through Grow North to make this legislation that will govern our future for decades to come?

Members, we have one message to you today: Suspend the review of the Far North Act and wait until the conclusion of the Grow North process to see what direction the people of northern Ontario want you to follow. To allow the Far North Act to proceed through the Legislature and become law before the Grow North process has concluded makes a mockery of your commitment to the north. It also makes a mockery of your duty to consult with the First Nations who live north of the undertaking.

That having been said, and in case this committee and the government of Ontario do not accede to our request, we want to provide you with some comments about the specifics of each act.

Let me turn to the Mining Act. Our sense is that the majority of the stakeholders are either supportive of this act or have decided to hold their noses and support it. There are a few items that need to be tweaked, however. The first is the map-staking component. Municipalities and First Nations have long opposed map staking because it reduces the employment opportunities for the people of the immediate area. It also provides an opportunity to have a sense of what is happening in the area. If map staking becomes the norm, then it will be another blow to our economy.

However, we recognize the value of a digitized system of map recording and sharing. We also recognize that there is an opportunity for new skills to be developed and jobs to be created. To this end, we recommend that the Ministry of Northern Development, Mines and Forestry work directly with the Ministry of Training, Colleges and Universities, Confederation College and Lakehead University and the communities and leadership north of the undertaking to develop community-based programs that will ensure that existing line-cutters receive the upgrades necessary to meet the new demands of map staking.

The second point of concern is found in section 35.1, where surface rights owners in the south have more

protection than surface rights owners in the north. In the north, it is up to the minister to decide if our privately held lands are protected, whereas in the south it's enshrined in law. It's not as if there is an abundance of private land up here—most of it is crown land. Don't treat us like children. Give our landowners the same rights the rest of the province has.

Secondly, we believe that any mining activity, whether it be exploration or development, within municipal boundaries must adhere to the official plan of that community and that any deviation from the provisions of the official plan must receive the approval of the municipal council through the normal procedures provided under the Planning Act.

Now let me now turn to the Far North Act. In addition to our earlier comment that the consideration of this act should be suspended until the Grow North plan has been completed and its legislation finalized, we feel it prudent to comment on some of the components. The arbitrariness of setting aside 50% of the land north of the undertaking is astounding to us. For the government to set aside "at least 225,000 square kilometres of the far north in an interconnected network of protected areas" is to say we are going to take away from you one half of the economic area of the north. That is unacceptable.

Let me put that size in context. If you take four of the five Great Lakes together—Lake Superior, Lake Michigan, Lake Ontario and Lake Huron—they would cover the land that the government has decided must be protected. Put it another way: If the protected area was placed over top the United Kingdom—England, Ireland and Wales—there would be 7% of the island country left for any kind of development. A bit excessive, we think, and designed to appease the environmentalists who live in their air conditioned homes and condos in the urban cities of southern Ontario.

Mr. Chairman, members of the committee, just because the population north of the undertaking is sparse, there is no reason to arbitrarily restrict their economic future. Now, don't get us wrong. We are all environmentalists up here. We cherish our natural resources and the unique features that come with the land we live in. This is about process. Let the community land use planning process proceed, identify the cultural areas to be protected, identify the flora and fauna that need special reserves, verify the interesting tourism features that should be protected and perhaps even formalized into a park. At the same time, the community land use planning process will identify those areas where it is appropriate for resource-based economic activity. The 50% edict must be a laudable goal and to arbitrarily make it a legislated goal is against proper land use planning and also goes against the constitutionally imbedded rights of the First Nations to be consulted. We echo the position of the Nishnawbe Aski Nation in seeking upfront funding to enable all of the First Nation communities to launch their individual land use planning programs.

One of the areas north of the undertaking that is ready to take off is the Ring of Fire in the James Bay lowland

230 miles north of Nakina that has seen more successful staking in the last three years than in the entire province since staking commenced. This is a hot property. There are discussions around constructing a new rail line to connect this area with the CN main line at Nakina and to bring ore all the way south to Thunder Bay for processing. Land use planning must start immediately, and if the First Nations are to be true partners in this process, Ontario must provide the funding immediately to ensure that this valuable work can commence.

Mr. Chairman, members of the committee, thank you for the opportunity to make our views known to you. We look forward to seeing those views incorporated into your report to the Legislature.

1130

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about three minutes for each party to—

Ms. Gwen Garbutt: I'm sorry. I'm having trouble hearing you.

The Acting Chair (Mrs. Linda Jeffrey): Sorry. We have about three minutes for each party to ask questions, beginning with the government side. Mr. Mauro.

Mr. Bill Mauro: Gwen, it's good to see you. Thanks for being here this morning. I'm going to go very quickly because I want to share some time with my colleague Mr. Brown.

First of all, Common Voice: Do they have any resolutions in regard to these particular pieces of legislation which you could share with us?

Ms. Gwen Garbutt: I don't know that they've actually been passed by the board yet, Bill. I know we're working on them.

Mr. Bill Mauro: Fair enough. So what we're reading today, then, is a brief provided by—

Ms. Gwen Garbutt: The executive put the brief together.

Mr. Bill Mauro: Okay, thank you very much. On Bill 191, the Far North Act, it's important, please—I'm not sure if you're aware—that this is first reading of Bill 191. It's very unusual for the government to go forward with public consultations after first reading. That's what we're doing here. We've been very clear in terms of our commitments, given the hoped-for co-operation of the other parties, after consultations with House leaders, that there will be opportunity for further consultation on Bill 191 after second reading. I wanted to let you know that as well.

Your comment about Grow North and this seeming to be, perhaps, a bit quick: I gathered from your comment that you saw this as being somehow smothering any potential economic activity that might occur in what is described as the far north. Currently, as you're probably aware, no commercial forestry at all is occurring up there. What is likely to occur will be mining, which requires a very small footprint, and any hydroelectric projects, as well as some eco-based tourism. I just wanted to mention that, to put some context around that.

The land use planning exercise that you talked about: It's important to recognize that there have already been

successes—Pikangikum—as well as some very forward-moving processes around Cat Lake and Slate Falls. There's some really good stuff going on there already as well.

I just wanted to mention that to you and quickly try to share some time with my colleague. Thank you.

Mr. Michael A. Brown: Thank you, and thank you for appearing here this morning. I just want to share my colleague's observation that this is part of the consultation. Especially with Bill 191, there will, in all probability, depending on the co-operation of the opposition parties, be another opportunity.

I just wanted to talk about the Mining Act—that's my responsibility here—and just say that we also understand that there need to be some opportunities for prospectors to seek upgrading, maybe, of their skills. We understand, through map staking, that in other jurisdictions it has not had the negative effect that you seem to be suggesting here. But one of the interests we have is of ensuring that those folks have every opportunity to gain the skills they need. As a matter of fact, there will be a prospector's course offered for sensitizing people to some of the new realities.

Maybe you could have some comment. I know you have some wonderful educational opportunities here in northwestern Ontario.

Ms. Gwen Garbutt: I guess my first question would be, is the province planning to subsidize this course or are these prospectors going to have to pay their own way? Some of our prospectors are in their 60s, 70s, 80s.

Mr. Michael A. Brown: The—

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry; you've run out of time. Maybe the answers will come through. Mr. Hillier.

Mr. Randy Hillier: I loved your presentation. I think, on Bill 191, you're absolutely correct: We've heard from many delegates at these committee hearings that the only people who were informed of the 50%-protected edict by the Premier were the environmental groups, the World Wildlife Fund and whatnot. The First Nations communities, prospectors, developers and municipalities were all unaware of that 50%-protected zone.

With what we're hearing from the south as well, and from many communities, about using the law to treat people in a different fashion, recognizing that communities should be involved in land use planning in the far north but not believing that they should be in the south or near north, treating landowners differently in the south than in the north. Do you believe that this can be and ought to be an amendment in this bill, treating all municipalities and all people with due process and the same process?

Ms. Gwen Garbutt: Yes, I do. There was a time when people up here used to be called second-class citizens. Now I think, because the south was always treated differently and when things went wrong within the south we had to pay the bill up here, there are all kinds of things to prove that point. Of course, now we have the Metro Toronto bill, the GTA bill. So now we've become, in my

personal opinion, third-class citizens: First there's Toronto, then there's the rest of southern Ontario, and then there's, "Gee, you guys are a pain up here." That's strictly personal, okay?

Mr. Randy Hillier: I think maybe you could also use the view from Toronto as third rate as well as third class, often, with this legislation, I happen to agree—that different hierarchy that we're building in this province.

Ms. Gwen Garbutt: We sort of feel that we're probably the best of the province up here. You can hit me afterwards, Mr. Mauro.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: You comment with regard to how there needs to be a mechanism in order to fund First Nations for them to be able to do the land use planning, and we should be doing that rather than trying to do this overarching bill that's basically not going to satisfy them. But my question is this: Even if we went down that road—let's say we followed that model and we said that each individual First Nation community and/or tribal council, in whatever configuration they want, is responsible for doing their land use planning—you would still need to have some sort of overarching principles that are entrenched in legislation so that there is some consistency with what comes out at the end. So the question is, which comes first? Should we allow them to do the land use planning first and determine what those principles are and then we come in with the legislation? Or should we try to declare what the principles are and let them go out and do the actual work?

Ms. Gwen Garbutt: All municipalities right now have rules that they have to follow when they prepare land use official plans, land use planning. I don't see that there should be any difference between the way First Nations communities do their planning and the rules we have to follow.

Mr. Gilles Bisson: My question is, though, should we be concentrating not so much on trying to develop what the land use plan is but on setting out what the principles are that would be contained in your land use planning so that First Nations and others are able to actually go out and do that work on a community-by-community basis, of course in consultation with First Nations? It seems to me that we're putting the cart before the horse.

Ms. Gwen Garbutt: When my own municipality does its official plan reviews or official plan amendments or whatever, we have rules that we're required to follow that are set out in the Planning Act. I see no reason why those same rules in the Planning Act shouldn't apply to First Nations or to any other area.

Mr. Gilles Bisson: There was a suggestion by somebody earlier, and I thought it was an interesting one, in regard to surface rights, that people who own the surface rights don't own mining rights. In many cases the mining rights were tied to the surface rights but were sold off at one point in the past number of years, and he was suggesting that there be some sort of amendment put in this legislation that makes the lawyer on the case—somebody—responsible, in case of sale, for informing

the property owner that there used to be mining rights but they've been extinguished because they were sold by the previous owner. Can you speak to that? Do you see that as part of the solution here?

Ms. Gwen Garbutt: Yes, it definitely is part of the solution. The other thing is that the same rules that apply in southern Ontario to surface rights should apply to northern Ontario.

Mr. Gilles Bisson: As a northerner, I get it. And by the way, if there's going to be a rail line or road, we're expecting to build it out of the northeast up to James Bay, just so you know.

Ms. Gwen Garbutt: I think it should definitely go from Thunder Bay, okay?

Mr. Gilles Bisson: You and I will have a fight on that one.

The Acting Chair (Mrs. Linda Jeffrey): Thanks for being here today. We appreciate your delegation.

Ms. Gwen Garbutt: Thank you.

Mr. Gilles Bisson: You know we do find ways of always providing for ourselves.

ONTARIO MINING ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Ontario Mining Association: Mr. Hodgson and Mr. Blogg. Welcome, gentlemen. Thank you for coming. We're going—

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Would you like Mr. Mauro to come back? I can call him. Welcome. Thank you for coming today. As you get yourselves settled, you know you have 15 minutes; I'll give you a one-minute warning if you get close to the one-minute mark, and there'll be opportunity for questions and answers afterwards. If you're all going to speak, could you identify yourselves for Hansard before you begin?

1140

Mr. Chris Hodgson: Sure. Good morning, Chair, and members of the committee. My name is Chris Hodgson. I'm the president of the Ontario Mining Association. With me today are John Blogg, the Ontario Mining Association secretary and manager of industrial relations; Adele Faubert, manager of aboriginal affairs at Goldcorp Canada's Musselwhite mine; and sitting behind us is Jerome Girard, who is the mill superintendent at the Musselwhite mine.

We appreciate the opportunity to appear today to offer a presentation and answer your questions related to Bill 173 and Bill 191. In addition, we will provide you with a full written submission before the September 4 deadline.

The Ontario Mining Association was established in 1920 and is one of the longest-serving trade organizations in the country. Our members include operating mines, metallurgical plants, contractors, suppliers and engineering firms. They are located throughout Ontario, driving wealth creation and regional development while significantly contributing to the province's tax base and balance of trade.

The Ontario Mining Association has a long history of working in concert with the government, communities of interest and the public to ensure that the mining industry in Ontario is competitive and serves to benefit everyone in the province. This Ontario mining profile, which I've included in your package, will give you some indication of the extent of our contribution. You will note that the handouts contain more than just figures with dollar signs that illustrate the economic impact of mining. As an industry association, we realize that it's not enough just to provide economic benefit to communities. Our values have evolved, along with our communities of interest, and are driven by a commitment to continual improvement as it relates to economic, environmental and social performance. We see fundamental value in operating in a responsible way to generate prosperity today, without compromising the opportunities of future generations.

Because our members strive to be leaders in sustainable development and community building, they are supportive of the general intent and direction of Bill 173 and Bill 191. The Ontario government should be commended for its intent to, in Minister Gravelle's words, "find a balance" in developing legislation that reflects the changing needs and aspirations of a dynamic society while supporting a vibrant, safe and environmentally sound industry.

We believe that the government took the right approach by consulting widely on the Mining Act, even before the official introduction of the legislation. As a result, the scope of the changes to the legislation is reflective of the key areas of concern to the public. We are certainly grateful for the opportunity to take part in the ongoing multi-stakeholder dialogue, including through the minister's Mining Act advisory committee, on issues that are of significant concern to our members, and to continue to have our views heard today and in the future.

For the purposes of clarity in today's presentation, I will speak first about Bill 173, the Mining Amendment Act, and second, about Bill 191, the Far North Act.

In its revision of the Mining Act, the government of Ontario laid the foundation for the continued success of the mining sector in the province by recognizing the need to preserve a mineral tenure regime that offers a level of confidentiality, security and certainty that will allow large and small companies to compete on a level playing field.

While retaining competitive staking, the government nonetheless addressed the concerns of private landowners by removing the need to physically access land prior to claim acquisition through the introduction of an electronic map staking system. The Ontario Mining Association is supportive of this approach, as it makes it possible to avoid unnecessary disturbance to the land, inconvenience to the surface rights holders and/or potential infringement on aboriginal or treaty rights. There are other advantages associated with map-staking, which include greater efficiency, avoidance of unnecessary costs and the ability to channel resources to more value-added activities, avoidance of safety risks, as well as a

reduction in the use of fossil fuels and, thus, lower emissions of greenhouse gases. The Ontario Mining Association commends the government for offering a workable and progressive solution that meets the needs of a variety of stakeholders, and supports the provision of \$40 million to implement the changes to the Mining Act.

At the same time, the Ontario Mining Association does have some concerns with Bill 173 and would like to seek clarification on some other aspects of the proposed legislation, ensuring that there are no ambiguities impairing the ability of mining to continue to play the major role it does in the economic and social development of Ontario.

A basic foundation of mining success in Ontario—the thing that sets us apart and gives us an advantage over some other jurisdictions with significant mineral potential—is rule of law and certainty of title. For that reason, the aboriginal consultation provisions in Bill 173 need to be clear, transparent and consistent with current case law, which states that the government has the primary duty, with some exceptions, to consult with aboriginal communities. "Duty to consult," as presented in the bill, seems to demand consultation by a proponent far beyond the requirements of case law, an ambiguity that may be reflective of the current general practice in the province which sees proponents, including our members, engage almost exclusively in consultation, both in the interest of relationship building and in furthering results to meet business timelines and objectives. There is no doubt that relationship building from the outset is essential and has, indeed, become common practice among OMA members. However, when it comes to ensuring transparency and the supremacy of the rule of law, the duty to consult is placed unequivocally with the crown. This means that the act should make explicit reference to government-appointed mineral development officers bearing full responsibility not just for the approval but for the actual conduct of consultation, thus fulfilling the government's duty to consult.

Given these clear provisions, and recognizing that they would constitute appropriate consideration of community interests, the industry would be prepared to accept the added regulatory burden of exploration plans and permits, the reintroduction of which runs counter to the government's overriding Open for Business policy. Needless to say, we expect that the government will work within the spirit of the Open for Business policy by putting in place administrative measures that will ensure fixed timelines and efficient processes associated with any new regulatory measures.

Having stated our general concern around the duty to consult, allow me to hone in on another area of the act that may need to be clarified. Under subsection 143(2) of the current Mining Act, a proponent is required to file a notice of material changes to a certified closure plan whenever such changes occur. The amendment proposed in Bill 173 adds the provision that such changes require authorization and that the amended certified closure plan needs to be filed with MNDM prior to undertaking the

changes described in the submitted notice of material changes.

The proposed subsection 141(2) of Bill 173, to have the amended certified closure plan filed before commencing the work, is a significant change to the act. The most onerous aspect of this change is the obligation on the proponent to conduct aboriginal consultations on the amendment to the satisfaction of the director. Let me recount a real-life story to illustrate what this change might mean to a mining operation:

Company A, a leading mineral producer and employer in a northern Ontario community, was the proponent of a certified closure plan for XYZ mine, which was filed with MNDM four years ago. Subsequently, the company submitted a notice of material change that reflected significant changes to the mining project, as described in the original closure plan. In response, MNDM requested an amended closure plan, which company A duly submitted, and which was approved by the ministry several months later.

Meanwhile, company A embarked on a consultation on the changes to the closure plan with the neighbouring AB First Nation. After a cordial first meeting with the community leadership, plans were made for a follow-up meeting. Despite numerous letters and phone calls from company A, the follow-up meeting date was not set until six months later, at which time it fell through due to the last-minute unavailability of the chief and council. Given an offer by the legal counsel of AB First Nation to arrange for a meeting, company A complied with his request to send in a copy of the notice of material change previously submitted to MNDM.

Since that time, 17 months have passed and, despite active efforts on the part of company A to arrange a meeting with AB First Nation, no further discussion about the notice and the proposed closure plan amendment has taken place. In conversation with the MNDM director, company A learned that its attempts to consult with AB First Nation would not be considered sufficient for their closure plan amendment to be accepted for filing. Therefore, if the requirement to have an amended certified plan filed with MNDM prior to undertaking the changes had been in force, XYZ mine would have been closed for over a year and remained shut down indefinitely, while company A pursued its attempts to consult with AB First Nation.

I am sure that you will agree that this level of uncertainty for a mining proponent is not acceptable in a province that is facing dire economic circumstances and making efforts to be open for business. To be sure, the revised Mining Act will probably not be implemented this way and will probably follow the present way we amend closure plans on existing operations. However, it would help if this was clarified or this part of the amendment was deleted.

In terms of promoting fair and balanced development, the government has taken the right approach in proposing improvements to the dispute resolution process by introducing the notion of a tribunal. We would like to

take this opportunity to stress that a truly robust process needs to be unambiguous, fair and transparent. Therefore, in addition to being experienced mediators, tribunal members must understand the issues and the law. In defining tribunal nomination criteria, the government, in our opinion, should consider the need to engage individuals with local expertise, including aboriginal representatives. As with the consultation process, clear timelines must be associated with the dispute resolution process to ensure security of investment and business continuity, taking into account factors such as timing of flow-through shares and the access to some of our sites, i.e., the winter roads.

1150

I would like to switch now to Bill 191 and make comments on land use planning and protection in the far north. Once again, we are appreciative of the government's efforts to foster a multi-stakeholder dialogue and to build consensus through the far north advisory council, which I had the privilege of being a part of, and whose recommendations we support.

The Ontario Mining Association is supportive of the government's stated intent to involve aboriginal communities in the land use planning process. We also strongly agree with the goal to strike the right balance between conservation and development, which was set out in the Premier's July 14, 2008, announcement. That is why we are concerned that the wording of the subsequent communication on this initiative, as well as the bill itself, is strong on conservation targets but non-existent on development targets. If we are to respect the integrity of the Premier's words and ensure the well-being of far north communities, development targets need to be included in the legislation.

Why not a target of 10 new mines in the next 10 years? A recent University of Toronto study concluded that the contribution of even a single representative mine can have an impressive effect on local employment and economic output. I have copies beside me if anyone wishes to read the whole report. At the same time, the actual footprint of a mine on the landscape is very small. The only two mines in the far north that are examples of this are the Victor mine in Attawapiskat, which brought a \$1-billion dollar investment by De Beers to the province, and the Musselwhite mine, which brings considerable benefits to a remote area of Ontario. Both mines rely heavily on the local aboriginal workforce.

While operating mines occupy a very small area, they are rare and very difficult to find, especially in a vast, remote area like the far north, where the geology is largely unknown. Because the geological survey work would be ongoing over an extensive period of time, the Far North Act needs to make provisions for regular review of the land use plans, perhaps every five years. New mineral discoveries, new science, the changing needs of northern residents, technological changes and shifting circumstances may all trigger review of land use plans. As with our comments on the mining act, we would like to stress that the review process in this case also needs to be objective, fair and transparent.

Given the level of effort involved in land use planning and review, including the need to conduct comprehensive, long-range data collection and geological mapping, a key determining factor in the success of the government's land use planning initiative is the sustained availability of adequate resources. Proposals for land use planning in the far north place a large responsibility and scope of work on First Nations, local authorities and companies alike. The legislation cannot achieve its goals unless greater governmental resources are dedicated to enhance the capacity for land use planning in the far north.

The government has rightly allocated \$40 million to implement the mining act, and it will require much more—hundreds of millions of dollars—to achieve the goals set out in the Far North Act. In embarking on the monumental task of land use planning in the far north, the government needs to ensure the necessary funding mechanisms are in place or it won't work.

In conclusion, I would like to point out that the mining companies function in a fiercely competitive and increasingly mobile global market. Ontario needs to remain open for mining business. Recent turbulence in the economy has had a negative impact on our industry, but there are steps that the government can take to ensure Ontario is in the best position to take advantage of the next upswing in commodity prices.

Sustained success of mining as part of Ontario's economy requires the following:

- certainty of the rule of law and land title;
- land access for mineral exploration;
- investments in training, infrastructure and technology;
- regulatory efficiency and certainty.

We believe that in developing the proposed legislation there is an opportunity to foster an environment that promotes fair and balanced development that benefits all Ontarians.

We look forward to working with you and answering any of your questions. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. You've left about two minutes for each party to ask a question, beginning with Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here today. I'll just start off with a quick first question. Were you aware of the Premier's announcement regarding Bill 191 and the protection of that much land before the announcement was made?

Mr. Chris Hodgson: Oh yes, for sure. We've been consulted for at least three years on this. It was mentioned in the campaign documents of the last election.

Mr. Randy Hillier: That a quarter million square kilometres would be prevented from development in the far north?

Mr. Chris Hodgson: We understood the ramifications of that at the last election.

Mr. Randy Hillier: Okay.

A recent Fraser Institute study showed that Ontario was falling in our ranking on mining investment. Does

Bill 191, taking out a quarter of a million square kilometres—how do you see that affecting the mining industry and our ranking? Is that trend of declining investment going to be severely impacted with Bill 191?

Mr. Chris Hodgson: There's a lot of competition for mining dollars throughout the world now, and unless you have clear rules that are well-funded and implemented, you're going to lose that investment.

Mr. Randy Hillier: There was also one mention—and again, "protection" conjures up different images with different people. Ontario Nature, one of their comments was that this would prevent any industrial activity in the north, not just 50% of the protected area.

Mr. Chris Hodgson: Well, I've had the privilege of serving on an advisory council with responsible environmental groups, and I think they realize that a mine actually takes up a very small footprint of the landscape and that modern mining companies want to be socially and environmentally responsible. So I think there's a balance there. I think we've moved beyond whether it's industry or the environment; I think we have to have both. That's what this plan should be about. It's just disappointing to me that—it's positive they sent it out at first reading, a lot of changes can be made. But the key one has to be the funding. You have to also live up to allowing First Nations and local people more of a say in the local planning.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just following up on Mr. Hillier: The comments that I'm getting, not only through this committee but also in communications that I've had with different people, is that their sense is we're throwing a pretty big net out there north of the undertaking. Who's going to know what 50% is going to be protected? The premise is that if I don't know what the 50% is now, why would I do any investments, when it comes to mining north of the undertaking, if we're not at the end of the process? So a quick question: Will this, in its present form, assist in attracting more investment to mining north of the undertaking?

Mr. Chris Hodgson: Well, the bill is so broad—it's sort of an umbrella legislation; you can put anything you want in it. One thing I would suggest is that the committee try to narrow down what the bill actually does. But if you have a plan that's properly funded, you will have a framework for a certainty of investment, a certainty of timelines and rules. If you are absent of the money to make this happen you'll have uncertainty, and money won't flow to an area that you don't know if you can bring in to develop.

Mr. Gilles Bisson: So we agree what the effect could be, so here's the nub: The reality is that 99% of north of the undertaking is already protected—99.999%. There's very little in the way of development north of the undertaking. You've got Musselwhite, which is yours, you've got De Beers and a little bit of hydro and some communities. So rather than trying to set out a number, saying 50%, why don't we make a process by which we

figure out how development is going to happen north of the undertaking so that (1) there is a minimal impact on the environment; (2) First Nations have a real say about where developments should take place; and (3) they benefit and the province benefits from those projects? Wouldn't that be a better approach?

Mr. Chris Hodgson: We suggested one in our approach here, that you have economic development targets, and we suggested a number of mines. Hold people accountable for having economic targets. I think that's a positive way. If you take all the mining activity in the province's history—past mines and present mines—it only takes up 0.03% of the total landscape. You could have 99.7% if you had all the mines in the province located just in the far north. It's a small area that actually takes place in modern mining.

Mr. Gilles Bisson: You should add up how many strip malls are out there now. I bet you the strip mall number—

Mr. Chris Hodgson: Our numbers are very small but have huge economic contributions.

Mr. Gilles Bisson: Do I have time for a question?

The Acting Chair (Mrs. Linda Jeffrey): No, you don't. You can talk to him afterwards. Mr. Brown?

Mr. Michael A. Brown: Good morning. Thank you for appearing. I don't really have many questions. What I'm really looking forward to is your more comprehensive brief, and you said it would be available by September 4. All the parties will be needing to prepare their amendments, so we look forward to that.

I think you make the point very clearly that what we're looking for is certainty. You can live with the rules as long as you know what the rules are and the rules are followed by everyone. That creates a climate we need to create here in Ontario for an even larger and more important mining industry in the province. I just wanted to thank you for appearing and I look forward to seeing your more extensive submission.

Mr. Chris Hodgson: I appreciate that. Thank you very much. Thank you, Chair, for your time.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for being here.

Committee, this brings to a close our delegations for this morning. We're going to be taking a recess for an hour now. The room is going to be locked. You can leave your effects here. I wouldn't leave anything you value.

Mr. Gilles Bisson: Can we leave our papers here?

The Acting Chair (Mrs. Linda Jeffrey): You can leave your papers. The room will be locked and the room will be emptied. We will be meeting in the Icelandic room for lunch. We will be breaking for an hour and reconvening at 1 o'clock.

The committee recessed from 1159 to 1300.

The Acting Chair (Mrs. Linda Jeffrey): I call the meeting to order. This is the Standing Committee on General Government and we're here to discuss Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North.

MÉTIS NATION OF ONTARIO

The Acting Chair (Mrs. Linda Jeffrey): Our first delegation this afternoon is the Métis Nation of Ontario, Gary Lipinski, president.

Good afternoon and welcome. Once you get yourself settled, you'll have 15 minutes to make your presentation. If you could announce who you are and the organization you speak for at the beginning, for Hansard. If you get close to the 15-minute mark I'll give you a one-minute warning, and after that the three parties will ask you questions.

Mr. Gary Lipinski: Thank you, Madam Chair. It's certainly my pleasure to be here. I have passed out written copies of the presentation I'll be giving for your reference as well to go through.

Good afternoon, committee members. I want to thank you in advance for the good work you're doing in undertaking this. I know what it takes to sit through some of these long sessions, and I'm reminded of something an instructor once told me as I was taking a four-hour course to jump out of an airplane: "The mind can only absorb what the seat can withstand." So I hope you all have comfortable seats.

My name is Gary Lipinski. I'm president of the Métis Nation of Ontario. I'm joined here by some of my other Métis colleagues in leadership within the Métis Nation. I'll mention them specifically, and they're sitting in the front row behind me. Secretary-treasurer Tim Pile: Tim holds a seat on our provincial governing body. He lives here in Thunder Bay, so it's wonderful that he could also join us here today. Cam Burgess as well is back there. Cam is our Region 2 councillor, and in our government structure that would be like an MPP position on our provisional council. Senator Bob McKay is also there, and he's a member of the local community, in local community council. Joining him is the president of the Thunder Bay Métis community council, Wendy Landry, and vice-president and our chair, Robert Graham, all from the Thunder Bay Métis Council. In addition, joining the delegation from the Métis Nation of Ontario at the back here is Ken Simard, who is our captain of the hunt and responsible for ensuring a safe and effective harvest with the Métis Nation.

Again, I have provided written copies of my presentation. In the benefit and interest of time, the first six pages go through in detail some fairly good information for your benefit that identifies the Métis Nation's governance structures, some of the challenges we face here in Ontario, some specific demographics that I think you will find interesting. But with your indulgence, I think I'll turn and get right into the meat and potatoes of our presentation and I'll then move to page 7 and begin on general comments on the act. Again, at your time, I think it would be beneficial for you to review those other pages, but I know what your time is like.

On the whole, the Métis Nation believes the modernization of the act is an extremely important and worthwhile initiative being undertaken by the government of Ontario. We believe the Ontario government should be

commended for attempting to reconcile this piece of legislation with the new legal realities in Canada; namely, the recognition of aboriginal and treaty rights of First Nations and Métis peoples in Ontario and the crown's constitutional duties and obligations that flow from these rights and the honour of the crown.

The MNO believes that all Ontarians, including Métis communities, can benefit from creating a stable, predictable and sustainable mining sector. Unfortunately, history has shown us that, by and large, Métis people and Métis communities have not been able to directly benefit or reasonably share in the benefits created through the mining industry in this province.

More often than not, mining companies as well as the crown have ignored the potential impacts of development on the people who are most closely connected to the land and who will still be on the land long after the mine has closed. Our rights and interests have largely been ignored due to either government denial or a regulatory regime that had no process to adequately deal with these important issues.

Equally frustrating, even though our traditional territories are rich in mineral resources, we have not shared in much of the economic benefits derived from these territories.

With that said, the MNO is supportive of any government initiative that will ensure these past realities are not repeated in the future. We are optimistic that a new act will transform the non-existent relationship between Métis communities, the crown and the proponents on mining development in Ontario to one of respect, collaboration and partnership. We are also optimistic that the often one-sided relationship between aboriginal rights and interests and economic development can be re-balanced in order to create a win-win situation for all involved.

Within the proposed act, we applaud the Ontario government's efforts to recognize aboriginal treaty rights, to acknowledge the crown's constitutional obligations vis-à-vis consultation and accommodation, to limit staking and exploration on lands that are important to aboriginal peoples, and to create a dispute resolution process in order to promote reconciliation and avoid the courts. However, the Métis Nation's support for the act is qualified and conditional because there remain many unanswered questions on exactly how these laudable commitments will be implemented through the act's regulations.

While the MNO appreciates that regulations cannot be developed until the act is passed into law, Métis remain concerned that many of the commitments could prove to be hollow for the Métis if the regulations are not arrived at through collaborative and meaningful processes that incorporate the unique perspectives of the Métis.

The MNO wants to ensure that the regulations establish a collaborative MNO/Ministry of Northern Development and Mines process for the identification of the regional rights-bearing Métis communities that need to be consulted in any given situation. Further, the regu-

lations should recognize and direct proponents to engage the regional consultation protocols which are a new part of the MNO's governance structure. As well, the MNO believes that within the regulations, adequate consultation and accommodation should require that a mining company operating within a traditional territory or Métis community have an impacts and benefits agreement in place with those communities prior to crown authorizations being approved. The MNO believes that unless the regulations achieve the act's stated purpose, the praiseworthy commitments in the act will essentially be meaningless. Simply put, the devil is in the details.

With that said, the MNO remains committed to working with the Ministry of Northern Development and Mines to ensure that the regulations fulfill the act's stated purpose and goals. To be successful, this regulation development process must be respectful, transparent and funded, and must treat Métis communities and First Nations equally.

The MNO is optimistic that such a process can be put in place, based not only on the relationship that has been building between Métis Nation of Ontario and ministry officials, but also Minister Gravelle's long-standing respect, inclusion, and support for the Métis Nation. As such, subject to the foregoing caveats and with the specific points I am about to discuss, the MNO is generally supportive of the act.

I want to now provide some specific comments on the MNO's concerns with respect to the act's proposed amendments and offer some suggestions in order to address these concerns.

(1) Use of the "aboriginal communities" descriptor: One of the MNO's overarching concerns with the act's amendments is the use of the term "aboriginal communities" throughout the legislation, rather than using the more specific and inclusive descriptor of "First Nation and Métis communities." It has been the MNO's experience that when this type of generic "aboriginal community" language is used, Métis are often excluded because some government officials as well as proponents wrongly assume that only First Nations are considered "aboriginal communities." In particular, in the mining sector we have already been witness to some proponents consulting and accommodating First Nations; however, Métis communities that are similarly situated and actually sharing a territory with these First Nations are being completely ignored. We believe the act's ambiguous "aboriginal community" language, which has no clear definition in the act itself, will only perpetuate this ongoing Métis exclusion.

While we appreciate that "aboriginal community" could be defined in the accompanying regulations, there is no guarantee of that occurring, and we do not believe that the inclusion of Métis communities should be limited just to the act, where the significance of the point too often gets lost in the fine print.

1310

For Métis people, the specific inclusion of Métis communities in this legislation is extremely important at both a practical and symbolic level. Since the Powley case,

instead of being completely ignored and always watching from the sidelines on government initiatives, Métis have been increasingly involved and included as partners in many of the McGuinty government's commendable commitments to aboriginal people, including the new relationship fund, resource- and benefit-sharing discussions, and increasing First Nations and Métis involvement in the Ontario energy sector.

It is the MNO's opinion that the success of many of these initiatives for Métis has turned on the explicit inclusion of First Nations and Métis communities in government policy announcements and direction from ministries. For example, the intentional inclusion of Métis communities in the new relationship fund announcement has expanded opportunities for MNO to work collaboratively with the Ministry of Aboriginal Affairs to develop a uniquely Métis approach for building consultation capacity in Métis communities throughout the province. The Minister of Energy and Infrastructure's September 2008 directive to the Ontario Power Authority on promoting aboriginal partnership opportunities specifically included First Nations and Métis communities as well. This explicit recognition has fostered the MNO's work with the Ontario Power Authority and other proponents on Métis-specific approaches to achieve the minister's directive. As a result, Métis-specific solutions have been allowed to take shape, and Métis communities are beginning to see real benefit from many of the initiatives currently supported by the Ontario government.

We also believe that this type of inclusive and explicit language vis-à-vis Métis communities befits the reality that Ontario is the home of the landmark Powley case and reflects the progressive and positive relationship that is building between the Ontario government and the Métis Nation.

Simply put, we are looking to turn the page on Métis being referred to as "the forgotten people" in this province. However, the only way to do that is by ensuring that our existence begins to be reflected in the written record of this province. Since laws reflect the goals and aspirations of a government at various points in time in history, we believe it makes sense that Métis communities be explicitly referenced in the act.

In sum, we would request that all references to "aboriginal communities" in the act be changed to "First Nations and Métis communities."

(2) The duty is not an aboriginal right and includes the duty to accommodate: MNO has two concerns with respect to the legal drafting dealing with the recognition of aboriginal and treaty rights and the crown's duty to consult and accommodate. The problematic language first appears in section 2, the purpose section of the act. Specifically, the text of concern reads that the act is to operate "in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult..." This is repeated in various forms throughout the act. While the MNO fully supports the underlying purpose of the inclusion of this language in section 2 of the act and throughout the act, our concerns

relate to whether the chosen language is actually consistent with the current state of law as it relates to the duty to consult and accommodate.

Our first concern is that the proposed language could be construed that the "duty to consult" is actually an aboriginal right recognized and affirmed in section 35 of the Constitution Act, 1982. It is MNO's understanding of the current state of the law that the duty to consult and accommodate is a super-added constitutional duty that flows from the honour of the crown and the recognition and affirmation of aboriginal and treaty rights in section 35. It is not an aboriginal right per se.

The second concern is that the proposed language only acknowledges that there is a "duty to consult"; however, the Supreme Court of Canada has articulated that as the duty to consult and accommodate. We believe that if the act is going to acknowledge the duty, it should be the one recognized by the Supreme Court of Canada, not a circumscribed description of the duty. Moreover, we believe that simply describing the duty as the "duty to consult" undercuts the fundamental purpose of the duty itself. In our opinion, consultation without appropriate accommodation renders the duty almost meaningless.

Through the consultation aspect of the duty, potential impacts or infringements of section 35 rights are identified. However, without accommodation being recognized as the corollary of the consultation process, the duty's very purpose cannot be achieved.

The MNO suggests that the language throughout the act be changed to read, "in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, as well as the crown's duty to consult and accommodate." We believe this language actually reflects the state of the law as it relates to the crown's duty to consult and accommodate and could avoid future litigation over ambiguities in the current drafting.

(3) Withdrawal of land with cultural significance: The MNO is concerned that the language in the act with respect to the type of land that may be withdrawn from prospective staking based on aboriginal interests is too limiting. Specifically, section 35(2)(a) of the act provides that land may be withdrawn if it meets "the prescribed criteria as a site of aboriginal cultural significance."

While the MNO recognizes that the prescribed criteria will be set out in the regulations, the guidance for the development of those criteria will be based on the language used in the act. In the MNO's opinion, the current language being proposed is problematic for two reasons:

(i) The use of the word "site" is overly narrow. In common usage, this word connotes a specific location or discrete place. This would appear to exclude broader areas or a region which may have cultural significance to an aboriginal people. The MNO suggests using the term "location" or "area" instead of "site."

The Acting Chair (Mrs. Linda Jeffrey): Mr. Lipinski, you have about a minute left.

Mr. Gary Lipinski: (ii) Limiting the aboriginal significance of a site to something that is purely "cultural" may exclude locations of economic or historical import-

ance to an aboriginal people. For example, a Hudson's Bay Company location may be of historical importance to a Métis community, but that importance may not be cultural per se. Further, a community could have an economic activity interest in a location that is not cultural. The MNO suggests removing the "cultural" qualifier.

Based on these points, the MNO suggests that the act state that land may be withdrawn if it meets the prescribed criteria as a location or area of aboriginal significance. Clearly, the prescribed criteria in the regulations would identify and describe what could qualify, but the MNO does not believe the act should be overly restrictive until adequate consultations with First Nation and Métis communities occur on what they would define as "aboriginal significance."

In closing, once again the MNO would like to thank the committee for this opportunity to provide its perspectives on the act. We hope the committee will seriously consider our recommended changes to the current draft of the act. As I indicated, the MNO will be providing a more formal written submission to the committee and the Ontario government by the end of the month.

On behalf of the Métis Nation of Ontario, we look forward to continuing to work with the Ontario government on this important initiative. If there are any questions, I would be more than willing to answer them now, Madam Chair.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about a minute and a half for each questioner, beginning with Mr. Bisson.

Mr. Gilles Bisson: I'm just reading your comments on section 35(2), that "the act provides that land may be withdrawn," and you're saying it's not descriptive enough? I wonder if you could elaborate on that a bit. It's too limiting, as you put it?

Mr. Gary Lipinski: I'm sorry, Gilles, what page?

Mr. Gilles Bisson: Page 18. I'm just wondering what your remedy is for that.

Mr. Gary Lipinski: I think we make the suggestion for some wordings. The word "site": When you refer to a site, I think we all think of a particular small dot on the map. For aboriginal people, it may be a region that has significance. If it's based on strictly culture—maybe there are economic activities or other activities that could render that particular area of extreme importance to the aboriginal community. So our suggestion is in the alternative wording suggestion there.

Mr. Gilles Bisson: Okay. And in regard to the Far North Act, the same concerns?

Mr. Gary Lipinski: We haven't been as engaged in the Far North Act, so it's a bit harder and more challenging to give comments on that.

Mr. Gilles Bisson: That's what I figured. I just wanted to see if there was an overarching comment you were making here. Okay, good.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. I have some questions mostly related to exactly how your organization is structured, because we need to understand how the consultation, in your view, needs to proceed. We had two representations yesterday in Sioux Lookout from the Congress of Aboriginal Peoples concerning non-status Indians besides Métis. One of the problems I see and I'm trying to understand is, because this is—how should I put it?—very geographically defined, do we consult with the provincial organization or do we need to consult with a specific geographical area of your organization, for example? I just want your views on that.

1320

Mr. Gary Lipinski: Thank you; that's an extremely important question. I think you'll get a lot more detail in the first six pages than I'll provide right now. We have put in a tremendous amount of work over the past two years. I heard some of your presenters this morning raising the concern about, "How do you consult? How did you consult with aboriginal people in the past two years, with a great deal of support from the Minister of Aboriginal Affairs, to put forward a consultation process?"

The Métis Nation of Ontario has actually established a provincial consultation process. We've established regional consultation protocol units that encompass large regional rights-bearing Métis communities. An example is, you might have three or four community councils working in collaboration because it's a larger regional rights-bearing community that could be affected. Recently, with the new relationship funding, those will be supported, so we'll begin to have some sort of core capacity.

First of all, the Métis are one of the three distinct aboriginal peoples; they're recognized in the Constitution with those rights. The Powley case confirms that. We have an accommodation agreement with the Ministry of Natural Resources on our harvesting. That agreement sets out our traditional territories across the province of Ontario, and so, clearly, our territories are mapped and identified in that agreement, and our protocols are being set up similarly along with that. So we do have a process. The province-wide consultation policy and the regional protocol units are all in place. We're very happy now to share that with governments and proponents, and they'll know who and how to engage the Métis Nation on consultations.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. Just to follow up on the question, you mentioned the territories and that MNR and the allocation basis has some—but that's only based on the Powley case, I believe, in the Soo area. How, for example, do you envision yourself if something is taking place with the Garden River reserve and the Métis Nation in there? How would the consultation move forward or how would the revenue sharing or any benefits be put in place?

Mr. Gary Lipinski: I think reservation lands are very specific to First Nations, so I think your question is

perhaps broader in the larger regional territory. However, the Powley case, absolutely, the home of it was Sault Ste. Marie, but it's a case that has national significance. It's a landmark test case for Métis. Similar to how Sparrow in British Columbia affected First Nations rights across Canada, Powley affected Métis rights across Ontario and Canada.

The agreement we have with the Ministry of Natural Resources is a province-wide agreement. The regional territories are identified in that agreement so there are a number of territories across the province where Métis are allowed to harvest food for sustenance etc., based on that agreement.

Mr. Jerry J. Ouellette: So you're saying that those territories would be how you would determine which organization would be consulted or receive benefit, consultation or revenue sharing?

Mr. Gary Lipinski: I'm saying that that is the basis that triggers, obviously, a duty to consult; there's no question. The lands are many things. You can have them described as crown lands—they are; they're crown lands. First Nations would be up here and say they're treaty lands, and they are. They are also Métis lands. That's what our agreement reflects: The lands are many things to many people. They're Métis lands, they're crown lands, and they're treaty lands. We all have an interest in them.

The second part of your question is, who and how to trigger it? Again, the Métis Nation of Ontario represents Métis people across Ontario. We have a democratic process to elect its officials, its leadership. They have a four-year term, ballot box elections etc. That's all outlined in the first six pages. I'm here expressing provincial opinion, but as I said, the policy we've created has allowances for local or regional consultations. For instance, if there is a project taking place in the Sault Ste. Marie area, there's a regional protocol set up in that area that has two community councils working collaboratively on activities that could be of interest or concern in that region.

Again, we understand capacity is always going to be an issue as you go forward, particularly with duty-to-consult obligations. We have not set up a process whereby you need, in every community, an expert on duty to consult and a scientist and a geologist etc. We've set up a process within the Métis Nation of Ontario where you have head office support and you have staff at the regional level that can—let's say, for instance, you need to have an expert geologist go in to work with proponents in a particular area. That can be provided with head office support or on a consultation basis.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Thanks for being here today. We appreciate it.

Mr. Gary Lipinski: Thank you again.

THREE ELDERS

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is a teleconference and we're going to just skip over them because they're not quite ready yet. So we're going to go—yes?

Mr. Jerry J. Ouellette: Chair, I would ask the researcher to provide the MNR breakdown of the province-wide information as it relates to the Metis breakdown that was mentioned here, within the MNR, so that we can get a sense of which Metis community and how that actually unfolds. So if the researcher would be able to provide that, it would be greatly appreciated.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Do you understand the question? All right.

So we're going to our third delegation this afternoon, which is Three Elders, Mike Morris. Is he here? Mr. Morris? Yes, please, have a seat. Welcome. Thank you for coming today. You have 15 minutes to speak. If you get close to the 15-minute mark, I'll give you a one-minute warning. Then after that there will be an opportunity to ask questions. If you could state your name and the group that you speak for before you begin, you have 15 minutes whenever you're ready.

Mr. Mike Morris: My name is Mike Morris. I'm a member of Kitchenuhmaykoosib Nation and I'm a signatory to Treaty 9, the James Bay Treaty.

First of all, I usually start with God bless. I'm not a traditional powwow native person. I'm a Christian. I want to start with these two scriptures that have been given to me. The first one, from Acts 17:26, tells me that I'm part of the family of man and we are to use our traditional lands and resources, which in our own law is a system of governance. God has determined how long our people can live on our traditional lands. These are the lands that He provided to our people. The second scripture, Hebrews 8:10, tells me that—we're in an oral-based society, so the laws that He gave to us, He put them in our minds and wrote them on our hearts. These are the laws that I call our own constitution. It has been with us since time began for us.

I called the presentation the Three Elders because I had the honour of working with these Three Elders. Jeremiah McKay left this world on September 17, 2008, and Moses Angees left this world in 2006. Peter Barkman couldn't be here. He's living in Sachigo. These are the elders who taught me about Chief Jimmy Tait. In 2003, one of my aunties provided me with the Chief Jimmy Tait book. This book is written in our original language from the 1880s. It's not the language that we use now.

I'm not allowed to provide a copy of the book at this time, but one of the teachings that we get from there is the aboriginal title. These sayings might be different from what you people understand. Aboriginal title is a collective right to land and is communal in nature. What that means is that the map that you have been provided with—every member of the Kitchenuhmaykoosib Nation holds aboriginal title to every part of that land. It's a legal right. We've been there since time immemorial. It's independent of any form of non-native legislative enactment, like Ontario or Canada. It's governed by two principles. One is that the title gives our people the right to use the land for a variety of reasons for the way of life that God gave to us. Number two, we can't use this land in a manner which it is not provided for us to use. None of us

can say that we own the land as individual people and all decisions with respect to lands and resources must be made by all of our people.

1330

You people have the map that was provided to us. These are our traditional lands. The indigenous term for them is the Omajiiweenehwah lands. This work was done by Chief Jimmy Tait and his helpers from 1896 to 1904. It was our response to the coming of Treaty 9, the James Bay Treaty. These lands, our traditional lands, were to be located outside the reserve system, which is operated by Canada in the present day, and outside the designated Ontario crown lands. Our people would own all lands and resources within these lands and they would control and own any and all resource development projects.

Based on their knowledge of the land at that time—the late 1890s—our people helped Chief Jimmy Tait identify the lands which would be included. They did the work during the summer months and utilized all the river systems which are in our traditional territories. The plan, as has been explained to me, was that all habitable areas for our people were to be included: all the known mineral deposits, all the water ways, all the sustainable forestry areas, all the animal habitats, all the potential agricultural areas and all the good fishing areas.

I cannot tell you how the work was exactly done, where the markers are located, what the markers look like and who his helpers were, but our people knew the territory. In the year 2000, at Big Trout Lake, at Kitchenuhmaykoosib, it took some of our elders one afternoon to complete identifying the boundaries of our traditional lands. What must be understood is the lands we agreed to share, as per Treaty 9, are those lands outside the traditional lands. What must also be understood is that we can only speak for our own nation, plus the Ojijahkoosuk people, the North Caribou Lake people.

What does this all mean? Our aboriginal rights come directly from God and our people have a sacred obligation to protect our lands. The foundation has been explained to me: Manitou Ohtoonachikewin—that's the natural law; Kanaawaynimedisowin is our sovereignty; Innineemowin is our language; and the Chief Jimmy Tait lands are our lands. Our aboriginal rights also include the right to self-determination; customary indigenous law; indigenous land rights—aboriginal title to our lands; and land-based rights.

Our Kitchenuhmaykoosib Kanaawaynimedisowin, our sovereignty, provides the right of jurisdiction over the Chief Jimmy Tait lands. These lands were provided for the continual use and benefit of the Kitchenuhmaykoosib people and our ultimate obligation, our sacred responsibility, is to protect the land for the future generations to come.

Nationhood: When you talk about nationhood, this is coming from your former Prime Minister Pierre Elliott Trudeau. He said, "Nations make treaties; treaties do not make nations" when he was talking to our chiefs. There is a list of four requirements of any nation as we were made to understand, and we respond to them in terms of

how Kitchenuhmaykoosib Nation meets these requirements.

The James Bay Treaty—Treaty 9: I'm not going to go through what your treaty rights or treaty obligations are, but the one thing I want to say right here is, I was very happy to hear about two weeks ago, in one of the papers I was reading up in Dryden, that one of my non-native brothers said, "I'm so happy that I finally understand that I have treaty rights and treaty obligations." That includes all of you who are here.

A treaty is a two-party deal. Each one of us, each party, has treaty rights; each party has treaty obligations. Treaty 9 did not deprive the Kitchenuhmaykoosib people of their sovereignty but rather, because we could conclude the treaty, it confirmed our sovereignty.

Sovereign relations between peoples is very important in terms of treaties, and Treaty 9 is the highest law of the land. I don't think I'm out of point to say that our people regard the treaty as the highest law, because we have tried every which way to uphold that treaty. It's also the foundation between our two peoples. As a signatory to Treaty 9, each one of us has the immense responsibility to maintain the treaty obligations and our treaty rights. All this information points to what I've called our previously-existing-since-time-immemorial constitution as a people who belong to the Kitchenuhmaykoosib Nation. I am well aware of the history of Canada, that in 1867, 142 years ago, the Canada act came into force. I can tell you that my great-great-grandfather was alive and well in 1866, so whatever constitution we had at that time, this is what I'm calling it. Our aboriginal rights must always remain with our people.

This goes against section 35—you'll notice I don't really say too much about the Mining Act and everything else. Treaty 9 is there. This is the foundation of the relationship between our two peoples, and it's the highest law of the land as far as we're concerned.

Therein lies the problem that we want to leave with this committee. According to the Constitution Act, 1867, Canada's powers are outlined in section 91; Ontario's powers are outlined in sections 92 and 93. We hold the belief that it is Canada which became the successor to King George V of England in regards to Treaty 9. We are also aware that Ontario played a big part in the drafting of Treaty 9, and this action contributes to the ongoing problem.

Within your Constitution Act, we ask these questions: Does Ontario, as a province, have the required jurisdiction and powers to enter into any treaty? Does Ontario, as a province, have the power to continually breach Treaty 9?

Like I said, I'm not here to talk about the Far North Act. I'll leave that to other people that like to meddle in somebody else's business. I'm not here to talk about the Mining Act. What I'm trying to say here is, if you look at that map, it says "draft mining policy" around that red area that we call our traditional lands. This is the way that these elders have taught me: that the people within this traditional territory have the wherewithal, the sovereignty, to

be able to have their own mining act, and Ontario can have their own mining act. The work should be on how these two policies would work together, how the two peoples can work together in one house. We're in this territory together, and we have to learn to function together.

I guess for people like me, we don't participate in contemporary aboriginal politics like Nishnawbe Aski Nation. I don't participate there. This is what I believe in. This is what our elders have been talking about. I wish that you people had the understanding of our language. If you ever listen to Wawatay radio, you should ask your people to translate for you what our elders are saying. It's a lot different from what NAN tribal councils say.

For me, I wanted to put this on record in memory of the two elders who have left. I've been talking with the remaining elder for us to complete the translation of the Chief Jimmy Tait book. Like I said, it has been very taxing, because my abilities are very limited, but we have people who are willing to work with us.

1340

I wanted to make these statements in front of the standing committee, that there is a different understanding out there amongst some of us and it doesn't have much to do with having to meddle in your affairs so much. What we're more concerned about is that there are two peoples here; there is a treaty that was signed by two parties. I hate to say this, but the racism that is inherent in your legislation contributes to these two peoples being undermined. As long as that remains, there's never going to be peace; there's always going to be friction, and that's what we're trying to address here. We're not complete, but we're getting there.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Morris, you have one minute left.

Mr. Mike Morris: That's about all I wanted to say. Like I said, I'm a Christian. I'm not here to fight with anybody, but I'm here to say there is a sacred responsibility that we have. We're going to be becoming very vocal as time goes on. I hold nothing against what you people are doing with your acts and everything else; that's your business. I have mine, and that's where we're going to be working.

So with that, thank you very much to everybody and God bless.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Morris. About a minute and a half for each questioner, beginning with—

Mr. Mike Morris: Before anybody asks questions, I'm also very deaf, so you have to speak up.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Mr. Morris, you've left about a minute and a half for each questioner, beginning with the government side. Mr. Brown, are you going to be asking a question?

Mr. Michael A. Brown: Thank you, Mr. Morris, for appearing. You've brought a perspective we needed to hear and we wish you well with making your representations.

Mr. Mike Morris: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much for your presentation, Mr. Morris. Yesterday we had a presentation from the Cat Lake and the Slate Falls communities, where they brought forward the land use planning initiative that they have. When I look at your draft mining policy with the map and when I look at their map, there appears to be a lot of land that overlaps. How do you resolve which community has control or has initiative or any workings in those areas?

Mr. Mike Morris: That has been an ongoing issue in many areas. Muskrat Dam and Sandy Lake is one that comes to mind. What we're trying to say here is, you know, this is our problem. We should try to work it out on our own. We shouldn't let other people's process come to try to dictate how we resolve our conflicts.

Mr. Jerry J. Ouellette: I think that just gaining an understanding of some of the complexities between the various land expectations, between the various First Nations communities, for the committee is very important. Which part of the north are you from, Mr. Morris?

Mr. Mike Morris: Actually, I'm from Kitchen-uhmaykoosib. I was born and raised in Big Trout Lake, but I live in Kasabonika Lake right now.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Like Mr. Brown, I think that your perspective is important for people to understand because that's one of the first things I learnt in becoming a legislator for the James Bay, which is mostly the Mushkegowuk Cree, the Wabini and also the Mattawa: Signing a treaty didn't mean to say that you gave up anything; it just meant to say that you were going to share. The problem is that we forgot how to share, and now we're trying to figure out how to do that all over again. So I think your perspective is good.

I was intrigued—in your comment here, you say, “We hold the belief it is Canada who became the successor to King George V of England in regards to Treaty 9,” and you go on to say that Ontario probably doesn't have the right to sign a treaty. I think constitutionally that's an interesting argument, because it was the provinces that created the federal government at the very beginning, and we, by right of the Legislature, have our authority through the crown. So in fact the province has jurisdiction, and that's why we're dealing with the Mining Act. I'm just wondering, in your estimation, where do we go from here? Because the province certainly feels that it has jurisdiction.

Mr. Mike Morris: That's the ongoing issue that should be looked at. Instead of these acts, we should take a step back and talk about that treaty relationship. When I'm asked that question, I'm reminded of the softwood lumber issue. There was a story that was told to me that the province of British Columbia wanted to sue the United States government because of all the problems that had been created in BC. They were told to go back to Canada. They were told that only Canada can enforce

that treaty. So that's why you have that twist. That's where I'm coming from: how you resolve that. I think that should be one of the first things that is done, instead of these acts being looked at too much right now.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Morris.

Mr. Gilles Bisson: I guess my comment, as you're leaving, is that Ontario thinks it's already resolved that, because it's always been the position of Ontario that it has jurisdiction. We're responsible for crown lands and we've entrusted the Queen to do that.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for being here.

CENTRAL CANADIAN FEDERATION OF MINERALOGICAL SOCIETIES

The Acting Chair (Mrs. Linda Jeffrey): Committee, for our next delegation we're going backwards now to the former delegation, which is the Central Canadian Federation of Mineralogical Societies, Mr. Beckett, president, and we're on a teleconference.

Mr. Beckett, are you there?

Mr. Robert Beckett: Yes, I am.

The Acting Chair (Mrs. Linda Jeffrey): You can hear me? Hi, this is Linda Jeffrey. I'm the Chair of general government during the meeting today. You have 15 minutes for your presentation. I will give you a one-minute warning after you've begun if you get close to the 15-minute mark. Following that, you will have an opportunity to answer questions of our committee. I will tell you who is speaking when we get to that point in the meeting. When you begin, if you could state your name and your organization for Hansard, and you'll have 15 minutes.

Mr. Robert Beckett: I'm sorry, but you keep fading out on me. I'll do what I can here.

Good afternoon, Madam Chair and members of the committee. My name is Robert Beckett. I'm the president of the Central Canadian Federation of Mineralogical Societies, known as the CCFMS. On behalf of our member organizations, I'd like to thank you for allowing us to have this opportunity to comment on the proposed Mining Act amendment, Bill 173.

A little background on who we are: The CCFMS is a non-profit federation of rock and mineral lapidary clubs. We're obviously in central Canada and represent 25 member organizations in three provinces, 21 of which are in Ontario, representing approximately 1,800 members.

The CCFMS has been serving its member organizations since 1969 and was incorporated in 1972. One of our primary objectives is to encourage educational research, plus co-operation and information exchange amongst member organizations—institutions such as the Royal Ontario Museum in Toronto and the Canadian Museum of Nature in Ottawa—and other societies, federations and organizations interested in geology, mineralogy and the lapidary arts.

Our membership covers a wide range of personal backgrounds with equally varied depths of interest and

expertise in the various geological and mineralogical fields. We recognize and agree that mineral collecting in the province of Ontario is a privilege, rather than a right. As you are aware, hobby mineral collecting, or rockhounding, in the province of Ontario is currently regulated through the Mining Act by the Ontario mineral collecting policy L.P. 701-1 and Mineral Collecting in Ontario: Guide for Rockhounds. The CCFMS was a party to the development of this policy.

The Ontario mineral collecting policy recognizes the benefits of mineral collecting, or rockhounding, as a recreational, educational hobby. In fact, it states that anyone can be a hobby mineral collector in Ontario. You do not need a special licence or permit. You do, however, need to know about the regulation governing the use of Ontario's mining lands and mining rights.

Our primary concerns regarding the amendments stated in Bill 173 are focused in three sections: section 1, interpretations, subsection 18(1) and subsection 19(1). In subsection 1(1), the definition of prospector means the investigation of, or search for, minerals. In subsection 18(1), it states that no person shall, without a prospector's licence, do any of the following with respect to land that has not been recorded as part of a mining claim for which the mining rights are held by the crown: One is prospect on land, two is stake a mining claim, and three, make an application to record the staking of a mining claim.

Based on the definition of prospecting in subsection 1(1) and the restrictions stated in subsection 18(1), no one will be able to search for minerals or prospect on the land without a prospector's licence. With such a broad definition and restrictions, "prospecting" would include not only prospectors but anyone who has an interest in geology, mineral or gem collecting, including rockhounds, university and other students on educational trips, vacationing families just wanting to pick up a few mementoes of the trip—essentially anyone on crown land who picks up or removes a rock or mineral for education and study would contravene subsection 18(1) of the act.

Subsection 18(1), if left as stated in the current amendment, would contradict the Ontario mineral collecting policy and place unreasonable restrictions on most of the general public and severely restrict anyone from pursuing hobby mineral collecting or studying practical geology and mineralogy in the field. It would also have a significantly negative impact on mineral natural-resource-based tourism in many areas of the province, such as those in the Bancroft and Haliburton areas, that rely on the millions of dollars in mineral tourism brought to the areas each year.

As you're aware, all mining lands beneath private surface rights have been withdrawn from staking in southern Ontario, with no expectation of any change in the near future. This actually is having a significant effect on the mineral-based tourism program in Bancroft and surrounding areas, where many collecting sites are no longer available to the hobby collector. It's also affecting the economic development strategies of places such as Hastings county.

It is unclear if the government intends to have mineral collecting, including hobby collecting by a wide spectrum of the Ontario public, governed solely by the act. Similarly, in subsection 19(1), to obtain a prospector's licence, one must complete a government-prescribed prospector's awareness program, which may include aboriginal engagement practices, guidelines to exploration on private lands, and environmental rehabilitation. Is it the government's intention that all hobby mineral collectors must adhere to the same awareness programs etc., or will our federation be allowed to educate its membership in the appropriate manner of our choosing, where due regard for the environment is concerned?

Our major concern is that in Bill 173, amending the Mining Act, the government does not clarify the acceptance and recognition of hobby mineral collecting adequately, and indirectly subjects hobby mineral collectors to new inspection and enforcement provisions not currently included in Ontario's mineral collecting policy, L.P. 701-1.

If Bill 173, amending the Mining Act, included a clause stating that hobby mineral collecting is exempt from certain sections of the act, as prescribed by the Ontario mineral collecting policy, this would clarify hobby collecting. Or would it be more effective to have a definition of hobby collecting included in the act and its regulations?

Mr. Chairman and members of the committee, that ends my short presentation, and I thank you for your time and attention.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Beckett, are you done right now?

Mr. Robert Beckett: I am, yes, thank you.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Can I ask, for the committee, because my guess is they may have had some difficulty hearing every word that you said: Will you be providing a written version of your thoughts?

Mr. Robert Beckett: Yes, I can do that. No problem at all.

The Acting Chair (Mrs. Linda Jeffrey): Just so our researcher can get it all later on, to capture what you said.

Mr. Robert Beckett: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Our first speaker this afternoon is from the Conservative Party. Mr. Ouellette is going to be asking you a question.

Mr. Jerry J. Ouellette: Thank you for your presentation. I guess the sense of what I'm hearing is that basically rockhounds are your concern, and whether they will be disallowed to go onto properties or crown land in order to collect gems or precious rocks in any way, shape or form. Is that correct?

Mr. Robert Beckett: I'm sorry, I can't hear you. You keep fading in and out.

Mr. Jerry J. Ouellette: The feeling is mutual. Essentially what you're concerned with is the fact that rockhounds will be disallowed from participating in rockhound activities, should this legislation pass in the current form.

Mr. Robert Beckett: That's correct, yes. Exactly.

Mr. Jerry J. Ouellette: I don't understand how it would differ now, currently, without this legislation, as it would once it passes. When a rockhound is out there, they're not actually prospecting; they're collecting, as opposed to prospecting. Could you explain the difference from present legislation to how this would change it, or do you feel that there needs to be a designation of collector included in the legislation as well?

Mr. Robert Beckett: Yes, that's what we feel. We feel that a designation for a collector, or a definition of collector, should be included in the legislation.

Mr. Jerry J. Ouellette: Okay.

The Acting Chair (Mrs. Linda Jeffrey): No more questions? Our next questioner is Mr. Bisson.

Mr. Gilles Bisson: I'm going to go down the same line here. How would you propose this amendment be structured? Can you be a little bit more specific?

Mr. Robert Beckett: Well, basically, what we'd like to see is we'd like to have a definition of a hobby collector included in the act and its regulations, so that it's clear. Currently, it's unclear, with the mineral collecting policy and the guidelines for rockhounding. Nothing is very succinct. It's all unclear.

Mr. Gilles Bisson: So something, in effect, in the definition clause that would describe who a rockhound is, and saying that this act doesn't apply to them when it comes to their activities.

Mr. Robert Beckett: That would be great. In the same clause, it could state that hobby mineral collecting is governed by the mineral collecting policy, L.P. 701-1.

Mr. Gilles Bisson: Thank you.

Mr. Robert Beckett: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Our last questioner is Mr. Brown.

Mr. Michael A. Brown: Hello. Thank you for your presentation.

Mr. Robert Beckett: Thank you.

Mr. Michael A. Brown: I want to assure you that it is not the government's intention to cause rockhounds any difficulty out there and confuse them with prospectors, so we will take note of your presentation and see if we can clarify it as we go forward.

Mr. Robert Beckett: Thank you, sir.

The Acting Chair (Mrs. Linda Jeffrey): I don't have any more questioners. Mr. Beckett, thank you very much for making the effort, and we look forward to receiving your presentation.

Mr. Robert Beckett: Thank you very much. Bye-bye.

The Acting Chair (Mrs. Linda Jeffrey): Yes, Mr. Ouellette?

Mr. Jerry J. Ouellette: I'd ask the researcher—we've been hearing quite a bit about the various treaties that have been involved from the various communities. I would ask the researcher to provide the committee with copies of the treaties so that we, as committee members, can review them—I would say, everything that falls into Bill 191, but as well, Treaty 3, which was outside that area, just so we can have a copy and review it on our own as well.

The Acting Chair (Mrs. Linda Jeffrey): Our last presentation is the Boreal Prospectors Association, Mr. David Gordon. Is he here?

We're a little ahead of schedule. We have five minutes before he technically would have been here, so we're going to take a five-minute recess.

The committee recessed from 1356 to 1402.

The Acting Chair (Mrs. Linda Jeffrey): Committee, we're reconvening. Our last deputation, Mr. David Gordon from the Boreal Prospectors Association, is MIA. We cannot find him. We've called and have had no

answer. So I'm going to have to say that this concludes our presentations for today and we're going to adjourn. There are no more deputants.

But I would remind committee members that we're travelling tomorrow. You need to be in the lobby at 8 a.m. to catch the shuttle for the plane tomorrow; 8 a.m. in the lobby, please.

I'm going to adjourn the meeting unless there's any other business. Seeing none, we're adjourned.

The committee adjourned at 1403.

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mr. Robert Bailey (Sarnia–Lambton PC)

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mrs. Carol Mitchell (Huron–Bruce L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mr. Rick Johnson (Haliburton–Kawartha Lakes–Brock L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Lou Rinaldi (Northumberland–Quinte West L)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. James Charlton, research officer, Legislative Research Service

CONTENTS

Tuesday 11 August 2009

Mining Amendment Act, 2009 , Bill 173, <i>Mr. Gravelle</i> / Loi de 2009 modifiant la Loi sur les mines , projet de loi 173, <i>M. Gravelle</i>	G-893
Far North Act, 2009 , Bill 191, <i>Mrs. Cansfield</i> / Loi de 2009 sur le Grand Nord , projet de loi 191, <i>M^{me} Cansfield</i>	G-893
Porcupine Prospectors and Developers Association.....	G-893
Mr. Bill MacRae	
Grand Council of Treaty 3.....	G-896
Grand Chief Diane Kelly	
Municipality of Shuniah, District of Thunder Bay.....	G-899
Ms. Maria Harding	
Ojibways of the Pic River First Nation.....	G-902
Mr. Jamie Michano	
Ontario Nature	G-905
Mr. Peter Rosenbluth	
Northwestern Ontario Prospectors Association	G-908
Mr. Karl Bjorkman	
Kitchenuhmaykoosib Inninuwig.....	G-912
Mr. Sam McKay	
Common Voice Northwest.....	G-915
Ms. Gwen Garbutt	
Ontario Mining Association	G-918
Mr. Chris Hodgson	
Métis Nation of Ontario	G-922
Mr. Gary Lipinski	
Three Elders.....	G-926
Mr. Mike Morris	
Central Canadian Federation of Mineralogical Societies	G-929
Mr. Robert Beckett	

C424N
X616
-G25

G-35



G-35

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 12 August 2009

Journal des débats (Hansard)

Mercredi 12 août 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Far North Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant
la Loi sur les mines

Loi de 2009 sur le Grand Nord

Chair: David Orazietti
Clerk: Trevor Day

Président : David Orazietti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 12 August 2009

Mercredi 12 août 2009

The committee met at 1103 in the Chapleau Recreation and Community Complex, Chapleau.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines, and Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

The Acting Chair (Mrs. Linda Jeffrey): Good morning. My name is Linda Jeffrey. This is the Standing Committee on General Government and I'm calling it to order. We're here to discuss Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North. Our first delegation—Mr. Ouellette?

Mr. Jerry J. Ouellette: Madam Chair, just before you begin, I'd like to move a motion.

I move that the committee hold clause-by-clause consideration of Bill 173, An Act to amend the Mining Act, on September 14 and 16, 2009, and that the deadline to file amendments with the clerk be September 8, 2009, 5 p.m.; and

That the committee hold clause-by-clause consideration of Bill 191, An Act with respect to land use planning and protection in the Far North, on September 23 and 28, 2009, and that the deadline to file amendments with the clerk be September 21, 2009, at 5 p.m.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion?

Mr. Gilles Bisson: You won't be surprised that I'm still not satisfied with where this is going. I just want, for the record again, to be very clear. First of all, there are two bills, the far north planning act—we understand the government is trying to move amendments for it when the House returns. That's good; that's not a bad thing. But as you know, we're only at first reading on that particular bill and most of the amendments are actually going to come at second reading. So I think all we're really going to see at first reading, when it comes to amendments, are some general principles of what it is

that we want or don't want in the legislation from various parties.

The real crux is the issue of the Mining Act. Being asked, as the opposition, to present amendments to the Legislature by September 8 is difficult because we are still not finished our hearings. We'll be finished tomorrow. Based on what we hear from all of the presentations that we're going to get up until tomorrow night, Mr. Ouellette and I—and the government already has their amendments planned, I would imagine, because it's already in the legislation—are going to have to go back, talk to our staff, get legislative counsel to take a first draft at these amendments, then we're going to have to have discussions with the stakeholders and then bring them back for final draft to be able to present them. To do this before September 8 is extremely difficult. Again, for the record, I want to say that we understand that the government is going to get this bill. The question is, do we want the bill in its present form or do we want a bill that is missing the boat, I think, on a number of points?

You're going to get the bill before December. The House is going to sit until about the second or third week of December. All we're asking is, give us reasonable time to prepare amendments. If we were to use the same date that you're using for the far north planning act, I could vote for this motion because it would give us sufficient time to bring amendments forward.

So I would ask for a friendly amendment in order to move the date from September 8 to coincide with the date for amendments under the far north planning act. I would ask if anybody would be willing to support that friendly amendment.

The Acting Chair (Mrs. Linda Jeffrey): Further discussion?

Mr. Jerry J. Ouellette: So there's an amendment to the amendment on the floor, and the voting will be on the amendment to the amendment.

The Acting Chair (Mrs. Linda Jeffrey): Yes. Any further discussion? Seeing none—

Mr. Gilles Bisson: Recorded vote.

Ayes

Bisson, Ouellette.

Nays

Brown, Dickson, McNeely, Mitchell, Rinaldi.

The Acting Chair (Mrs. Linda Jeffrey): That's lost. Now we're voting on the amendment put forward by—

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Just on the general. Mr. Bisson.

Mr. Gilles Bisson: Just a very quick point on the general amendment: I think this is rather sad. We have people who are here presenting. I'm going to say upfront, it's going to be hard to incorporate what we're hearing into amendments, given the short timeline, and I think this looks bad on the government. If you want a bill, which I want you to have, that deals correctly with the Mining Act—nobody is in disagreement—let's at least get it right. Let's not rush our way through this and make more errors so that at the end of the day we end up with a flawed bill.

The Acting Chair (Mrs. Linda Jeffrey): Now we're talking about the amendment read by Mr. Ouellette.

Mr. Gilles Bisson: Recorded vote.

Ayes

Brown, Dickson, McNeely, Mitchell, Ouellette, Rinaldi.

Nays

Bisson.

The Acting Chair (Mrs. Linda Jeffrey): That's passed.

CITY OF TIMMINS MINING ACT COMMITTEE PORCUPINE PROSPECTORS AND DEVELOPERS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): So, getting back to the business of our delegations: Our first delegation is from the Porcupine Prospectors and Developers Association. I understand that Mr. Calhoun is here. Could you come forward?

Mr. Calhoun, as you get yourself settled—it doesn't matter which mic you sit in front of—when you begin, if you could state your name and the organization you speak for. You'll have 15 minutes. I'll give you a one-minute warning if you get close to the 15-minute mark, and at the end there'll be an opportunity for us to ask questions. Whenever you're ready, please begin.

Mr. Robert Calhoun: My name is Robert Calhoun. I'm actually here representing two organizations today. One is the City of Timmins Mining Act Committee and the other is the Porcupine Prospectors and Developers Association.

I'm going to stick to my prepared notes, and even though it looks fairly lengthy, I have to do it in a font where I can read it without wearing glasses. Vanity sticks with me.

Good morning, Madam Chairperson, and committee members. I am Robert Calhoun, a member of the city Mining Act committee and a long-standing member and past president of the Porcupine Prospectors and Developers Association. I thank you for this opportunity to present to you today.

1110

The PPDA is a regional organization of prospectors, explorationists and mining industry members that can trace its roots back to 1939. Our main function is to advise and consult with Ontario ministries and departments on any issue that affects the progression from prospecting to mine development and closure. We generally maintain a membership of 120 individuals and 15 corporate members. We have been, by far, the most active regional association in Ontario, and are responsible for the establishment and structure of what is now the Ontario Prospectors Association.

The city Mining Act committee was formed to inform and express the views of city council, the economic development corporation, the chamber of commerce, and interested citizens.

There have been many statements on the age of the Mining Act in Ontario. The act was first put into place in 1873, and revised and rewritten on a regular basis, with the last major rewrite occurring in 1990, when the act was modernized to reflect the values of that time, with changes to protect surface rights holders and switching to a monetary system for maintaining title to crown land and mining rights.

The present mining industry is governed by the Mining Act and is now heavily impacted by the Endangered Species Act, the boreal initiative, and now the far north planning act and the Mining Act modernization. We operate with permits and guidance from the Ministry of Labour, the Ministry of the Environment, the Public Lands Act, the forest protection act, the Endangered Species Act and the parks act, among many others. We determined at one time that between the provincial and the federal governments, we deal with about 15 ministries when we are in the mining industry.

Our position on Bill 173 and Bill 191: Both acts have been written and put into place far too quickly, with many contentious issues not fully covered.

To this point, Bill 191, in our opinion, is so poorly written that it has to be withdrawn and rewritten to be clearer, and appropriate funding put into place to move forward on a reasonable timeline. The area that you are looking to block off, protect, in the far north—I'm diverging from my notes here—is actually bigger than the three Maritime provinces and a good chunk of Newfoundland. So it's a huge area, and we think that 19 pages is insufficient to lay down the ground rules for doing that planning.

The minister's statements on Bill 173 emphasize that the new act is a balanced approach. It is our opinion that the present act is not unbalanced. Public opinion is that the Mining Act is being rewritten to appease special interest groups such as cottagers and surface rights

holders in southern Ontario, and generally, interest groups who do not live in the north—the Mining Act is mainly a northern act—and will be little affected by the ramifications of the changes.

Specific issues that have been identified by our membership and the committee with Bill 173 are:

- free-entry restrictions and security of title;
- indiscriminate withdrawal of mining rights and mining lands;
- far too much is being shoved into regulations;
- exploration permits;
- the power of search and seizure exceeds necessity;
- downloading of the responsibility of consultation with First Nations communities;
- payment in lieu of assessment to maintain mining rights; and
- a prospector awareness program.

A colleague of mine has presented to you in two different locations, and he presented, I believe, on two of those issues in each of the locations. Today I will be talking about the payment in lieu of assessment work.

At the present time, prospectors and exploration companies are required to file assessment work satisfactory to the Ministry of Northern Development, Mines and Forestry to maintain their right to explore mining claims in Ontario. You will notice that I used the words “right to explore.” With this right to explore comes a responsibility as well. Upon completion of field staking of a claim and filing of the recording—this doesn’t roll off the tongue easily—with the MNDMF, the clock starts to tick on a two-year cycle in which the holder of a mining claim is required to complete exploration work on those claims in the amount of \$400 per claim unit. A claim unit is a block of land 400 metres square. This work ranges from airborne surveys over properties that are sufficiently large to do that, ground geophysical surveying, prospecting, geological mapping and, in some cases, lucky cases, diamond drilling. Each of these activities has a standard dollar value associated with it, and the government personnel who approve this work will question any filing that exceeds the standard and will only approve work they feel is of high enough quality. In the past, work was filed and it was not necessarily high-quality work, but that has changed with the changes to the Mining Act over the years. After the initial two-year cycle the time in which to file additional work is reduced to one year, and the dollar value remains the same.

All of these activities have one thing in common: It must be completed by a person or persons, thus creating jobs for the field personnel, office staff and, yes, for government employees. The field personnel are usually not local to the area in which they are working. What that means is that we could have claims here in Chapleau when we actually live in Timmins. Thus, we create additional employment within the regional communities for hotels, restaurants and rental equipment companies. Bill 173, however, proposes to allow the claim holder to pay a fee in lieu of this assessment work.

Although the wording is that it will be onerous, there are major flaws in this approach. The payment of a fee

does not create employment in any sector, and the only winner in this approach is the general ledger of the government. This fee will enter the government coffers and will not, we feel, flow directly back into the MNDMF budget. Additionally, no geoscience data is created and made public in an in-lieu system. Generally, companies are commodity specific in their exploration, and another company looking for another commodity may make use of the data that the previous company has generated. We feel that the people of Ontario are poorly served with this provision through lack of employment of highly qualified people and the service industry that services the exploration companies.

My second point is on the prospector awareness course that we are proposed to take. The new Mining Act will require that prospectors take and pass a prospecting course to be qualified to prospect in the province. When we read this the first time, we were somewhat shocked by it, and as we thought about it we wondered what it meant for our members. The awareness program is to make prospectors more sensitive to the rights of property owners, the rights of surface rights owners and the rights of First Nations. This does not sound bad, but it would suggest that prospectors over the last 200 years have not been sensitive to these issues—and to that I would disagree.

1120

The work of a prospector is to walk through an area, break rocks that he or she finds and take away a sample for testing. Occasionally the prospector will dig a small pit to expose more rocks, and these are generally hand-dug pits and do little or no damage. No rights have been infringed upon yet.

The prospector, if they are lucky, will find minerals that they feel require them to stake claims. The claim staking requires them to blaze trees and erect posts on which they place their tags to identify the mineral rights for the ground that has been acquired. The present act clearly—and I’m saying “the present act”—lays out where they can stake, how to stake in areas where someone else owns the surface rights and to report to that surface rights owner the fact that they have staked the ground before they continue to do any additional work. If they continue to work without notifying the surface rights holder, that work is not available for assessment work, so whatever they do, they can’t use it to keep the claim. Fairly sensitive at this point, no prospector has a desire to create a conflict with any surface rights holder because they will be coexisting for some time as the prospector completes work to file with the government. The present act clearly lays out that compensation is due to the surface rights holder, and these rules cannot be contravened.

As to the rights of First Nations, the government is obligated to make prospectors aware of these rights and to set the rules around these lands in consultation with the First Nations. The mining industry and prospecting in this province are highly regulated at this point. Requiring a long-term prospector to pass an awareness course seems to us to be unnecessary.

Bills 173 and 191 have been put into place long before they are ready. It is clearly done for political posturing and has nothing to do with full consultation with parties impacted by such legislation. These bills could be in place for 20 or more years. Is the government willing to be seen as a government who would rather do something quickly or be recognized as a government that has done the best possible effort?

In conclusion, the parks act is in place to protect parks, the environment act is to protect the environment and the Endangered Species Act protects endangered species. Why does Bill 173 penalize the mining industry and place roadblocks in the search for and development of new mines, a much-needed wealth generator for the province of Ontario? The future of Ontario, if this legislation is enacted, is basically this: The rocks that host the mineral deposits in Ontario do not stop at provincial boundaries. If this bill is not changed, the grass will be greener across the border and exploration funds will flow to other jurisdictions. Any further erosion of wealth generation in the province is a disservice to all Ontarians.

Thank you. I will be pleased to answer any questions, although when they send me out of town with a prepared statement, it always puts them in fear when I go on my own.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Calhoun, you left yourself 30 extra seconds, so that was very good timing. We have about a minute and a half or three quarters for each party to ask questions, beginning with Mr. Ouellette.

Mr. Jerry J. Ouellette: Thanks very much. I'm very much concerned about the awareness program, the sensitivity program, and the availability of where it takes place for individuals who have been prospecting for 40 years—I know individuals in their eighties who've been prospecting for 60 or more years—who have a desire to participate in that activity. I would agree that there is some concern. We want to make sure that, should this awareness program be available—where, for people to take it? The difficulty is—as, being a prospector yourself, I'm sure you're fully aware, although the committee members may not be fully aware—the secretive nature of the prospectors as individuals.

But my question would be more so as, as soon as you ask for consent to stake an area, what would that do to the availability to other prospectors finding out where you're staking your claims, and then how secretive would that be within an industry where being secretive is so important?

Mr. Robert Calhoun: You're quite correct in the fact that we are a secretive bunch, and if we have to ask permission first, that gives the present landowner the opportunity to go stake the land themselves, which they can do, and also, depending upon their sensitivity to our secrecy, they could make it aware to just about anybody. The city of Timmins is a good example. Some people say, "If you're in Timmins, you buy stock on rumour and you sell on news," because we run on Tim Hortons rumours; that's the way things go.

Mr. Jerry J. Ouellette: You need some form of protection for that concern—

Mr. Robert Calhoun: We do.

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry, Mr. Ouellette, your time has expired. Mr. Bisson.

Mr. Gilles Bisson: I agree with your assertion in regard to prospectors' awareness. Also, the payment-in-lieu issue I think is important, because the problem with the payment in lieu is that really it's not only going to take work away from individuals in communities such as this and others; it's really going to give the larger mining companies an ability to hold land, pay in lieu the \$400 per year and have absolutely no geological work done, which doesn't add to our minerals database. So it's counterproductive; I agree.

However, on prospectors' awareness: In a lot of trades, when they go in and regulate a trade, they sometimes will grandfather. For example, when electricians were created some years ago, people who were in the trade for a certain amount of time got grandfathered; they didn't have to go through the apprenticeship training. If there was an amendment to grandfather those prospectors currently in the business and only make it a requirement for new prospectors, is that an amendment that you can support?

Mr. Robert Calhoun: Personally, I would support that. A lot of prospectors are out there with a lifetime prospecting licence at this moment, and I definitely wouldn't want to be the one telling them that I'm going to take that away from them.

Mr. Gilles Bisson: I want to know who's going to tell Don MacKinnon he's got to go for—I want to make the committee Chair responsible to go see Don MacKinnon and tell him he needs to take sensitivity training.

Mr. Robert Calhoun: That's not something you want to do on a regular basis.

Mr. Gilles Bisson: So an amendment that would grandfather existing prospectors is something that you could support.

Mr. Robert Calhoun: It would be something that we would support but we need to know who's going to give the courses and where they're going to be given. We need to know that. There is a part of the bill that says that you have to do that six months before your prospecting licence is renewed again, which is now on a five-year cycle; so you have to take this course more than once in your lifetime.

Mr. Gilles Bisson: But my idea in the amendment would be to include all—

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown, you are the next questioner.

Mr. Michael A. Brown: You made some good points.

I just want to point out to you that these hearings are about Bill 191 on first reading. This is a very unusual procedure for the committee to take or the government to take. This is the consultation before the consultation, in other words, because after second reading it is common practice to have a set of public hearings on Bill 191. We understand the important ramifications of this bill and we want to, as much as possible, get that right.

On the Mining Act, it is of course second reading, and we will be looking for amendments. All members of the Legislature will have about a month to prepare those amendments. That is a reasonable length of time in the way the calendars work in the Legislature.

I was also interested in your comments about prospector awareness. I'll be interested in what you think should be involved in that course. I recognize that you're saying that a lot of prospectors, as a whole, know about these things, but for people entering the business, what would your suggestions be, seeing as the world has changed? The reason we're doing this is because the world has changed, so maybe you could give us some ideas on what you think could be shared with new prospectors in the field.

Mr. Robert Calhoun: Making them aware that someone may own the land, making them aware that they have to go and check with the ministry before they go into an area just to make sure where they are. We do, as an organization, give a prospecting course on, "This is how you prospect; these are usually the rocks you're looking for," so to add on a portion of that where we're talking about the rights of landowners and the rights of First Nations wouldn't be all that difficult to do for somebody new coming in. But at the present time, to get a prospector's licence in Ontario, you basically walk into the ministry and tell them you want one. It's a lot like getting a fishing licence, although our wallet is getting thicker. When we go into the woods, we've got to have all these new licences with us all the time. We could very quickly come up with an addition to our present course, but we want to know who's going to give it and who's going to decide who passes.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Calhoun, for being here today. We appreciate you making a deputation.

Mr. Robert Calhoun: Thank you.

1130

BOREAL PROSPECTORS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Boreal Prospectors Association. Is Mr. Michael Fox here?

Mr. Michael A. Brown: Madam Chair?

The Acting Chair (Mrs. Linda Jeffrey): Yes, Mr. Brown?

Mr. Michael A. Brown: Just as we're getting ready for this, as the member for Algoma-Manitoulin, I would like to take this opportunity to welcome all the members of the Legislature and our committee staff to the fine town of Chapleau. Hopefully we'll get to enjoy some of the fine Chapleau hospitality as we go.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for such a lovely location to have our hearings in. I think this is one of the nicest locations we've been in. It's very attractive.

Welcome, Mr. Fox. Thank you very much for being here. As I stated earlier, you will have 15 minutes. I'll

give you the heads-up if you get close to the end. Once you start, if you could state your name and the organization you speak for, for Hansard. You'll have 15 minutes, and afterwards, if you leave us sufficient time, we'll be able to ask you questions.

Mr. Michael Fox: Thank you. My name is Michael Fox. I'm the president of the Boreal Prospectors Association, which is the far north chapter of the Ontario Prospectors Association. I'm also a member of the PDAC aboriginal affairs committee and the vice-president of the First Nations Energy Alliance in Ontario, which is made up of First Nations energy proponents. I didn't realize that two other prospectors' associations were going to be here today, so I'm going to focus more on the far north and energy. All my views have been expressed through the PDAC submissions that have been done in Toronto.

I'm an economic advisor and an infrastructure specialist for First Nations up in the far north. I work with many of the First Nations communities, and as a practitioner, I'm trying to create new value, new projects, new assets, new revenue and new jobs for these communities. I understand the challenges in trying to do that, both on-reserve and off-reserve. You have to work with what you have. In the case of the far north, what you have is the mineral potential and also the energy potential. There aren't going to be any manufacturing facilities going up in the far north. Tourism is going way down. I've worked with a lot of the tourist outfitters up north and they're having a lot more challenges trying to get Americans in those beds in the outposts. In fact, in northern Ontario, the native tourism association no longer exists.

I wanted to go through the messaging that this Liberal government has given to First Nations across Ontario, and we took it to heart. In my presentation, I just did a slide deck for the members here. What we heard, as First Nations in northern Ontario—and I'm from the Hudson Bay coastline, just for the record. I'm from Weenusk First Nation, a place where polar bears roam. We're right in the middle of Polar Bear Provincial Park, so I understand the impacts of parks and the limits they have in terms of opportunities very, very well.

The Minister of Energy and Infrastructure stated in his ministerial directive that the Ontario Power Authority will revisit its IPSP, the integrated power system plan, with a view to establishing new targets in the areas of increasing its renewables and new transmission capacity, to deal with the limits that they have in terms of those lines, and to undertake a new, enhanced consultation process with First Nations, as well as looking at the "principle of aboriginal partnership opportunities" to be considered "in matters of both generation and transmission."

Out of that flowed the Green Energy Act, which I was a part of in terms of the founding members of the Green Energy Act Alliance. I've been following that process and we're continuing with that work, which is a piece of legislation that enables a lot more First Nations in Ontario to become part of the emerging energy sector.

The other messaging we hear is from the Ontario Power Authority. On page 2, the Ontario budget com-

mitted, as stated here, “to explore ways to partner strategically with aboriginal communities on potential renewable energy projects.... The province recognizes the importance of creating new opportunities for Ontario’s aboriginal communities in key sectors of our economy (including the energy infrastructure sector).”

With that, they are now creating programs and enablers such that the aboriginal are within the feed-in tariffs, which is the long-term energy contracts, which incentivizes communities to look at creating new energy projects in Ontario. As well, there’s the aboriginal loan guarantee by the Ontario Financing Authority. We had a presentation from them for energy projects. The Ministry of Energy is looking at an aboriginal energy capacity fund, again to allow communities to move forward on energy opportunities.

The Ministry of Northern Development and Mines just last year: a “new vision,” a “collaborative, coordinated and comprehensive approach,” with economic goals over 20 or 30 years in the future. “Aboriginal communities are increasingly looking for partnerships to create new employment and economic opportunities.” Think North: They had this series of tables across northern Ontario and it culminated in this big summit called Think North in Thunder Bay, held by Minister Gravelle under the northern growth plan initiative.

The other thing we heard is from the new Ministry of Aboriginal Affairs. The minister states that “strong and vibrant aboriginal businesses benefit First Nations, Metis and Inuit, and Ontario as a whole. The Ontario government has a balanced plan that will help build aboriginal economies, creating new industry, businesses and jobs that will sustain aboriginal people and communities into the future.” So they created the new relationship fund, which allowed communities to apply for study money, prefeasibility, feasibility, capacity building within the communities, and that includes probably the lion’s share of the far north communities looking for opportunities.

The Ministry of Natural Resources back in 2003 laid out its water power policy. In it, it stated right here as its policy intention aboriginal economic development. So it talks about how it wants to enable communities to participate in energy developments. It’s written in the policy itself that one of its principles is to allow that up to and particularly in the far north. In the northern rivers, Attawapiskat, Winisk, Severn and Albany rivers, the applicant of record for those northern rivers can only be an aboriginal community; it’s right in the policy. So there’s no other third party developer who can come in and apply for the sites; it’s only the community, which, with all the enabling legislation like the Green Energy Act, allows these First Nations to look at communities.

The other map I have in here was from the far north advisory council, which showed what kind of mineral activities were happening. I was sort of concerned by MPP Bill Mauro in his comments that I was reading in the transcript in Toronto that there was no economic activity in the far north. I was stunned that he actually made that statement, because of the billion dollars raised

through a junior exploration company, over half of that was spent in northern Ontario, and this map sort of represents that in 2007 and 2008. I was just blown away by that comment and very concerned.

So part of our job at the Boreal Prospectors Association and the First Nations Energy Alliance is to create capacity for these communities to be engaged in these sectors: minerals and energy. What else do you have in the far north? My community’s in a park; I know how difficult it is to create opportunities, to create jobs and create new businesses within protected areas. The only opportunities that I see that are viable are in the mineral sector and the energy sector. All the other ministries are helping to create a more enabling environment for First Nations, particularly in the far north, to get into the game as market participants. So I just wanted to point out this map.

I help communities put together applications—it’s a very onerous process through MNR—water power applications, so I gave you a map of all the applications submitted. There were 15 applications submitted to the Ministry of Natural Resources with a deadline of December 10, 2008. We have not heard one response from the Ministry of Natural Resources on these sites that we applied for. Within its own policy, it states that any applicant of record can only be a First Nation. Here’s MNR saying, “You guys can have these sites and create new economic opportunities,” you have Minister Smitherman saying, “We’re going to help you look at renewables and we’ll help you look at transmission lines,” and then we have MNR not touching our applications. Both wind power and water power applications were submitted; I just put the water power in here. These are the actual applications submitted. If you stacked the potential megawatts and we stayed within the current rule of a 25-megawatt limit within the northern rivers policy, it’s about 326 potential megawatts. At 326 times I would say \$4 million or \$5 million per megawatt, average industry, you’re looking at about \$1 billion of potential water power. And it’s going to be a question of scale, where if it’s going to be a cascading run of the river—we’re not talking about “bams,” or big dams. I’m not sure who states those things. I don’t think these communities want to have big dams but they’re looking at renewable energy opportunities based on the legislation.

1140

First-class wind in northern Ontario: The next map shows all the far north wind regimes. Everybody knows that first-class wind exists on James Bay/Hudson Bay and within the inlands. This map shows it. It’s MNR’s actual wind resource map. Again, no application has been touched. The Ontario Power Authority, ironically, is doing a far north wind study. Why, when MNR won’t touch our applications because of the Far North Act? We just don’t get the conflicting messages from this government.

I just showed other maps where communities are involved in transmission lines. Five Nations Energy is just beginning to look at renewable energy opportunities

along the transmission systems on James Bay. This map here, the northwest transmission expansion, is actually—sorry. Hydro One Networks plans to go from Little Jackfish, north of Lake Nipigon, all the way to Pickle Lake, which means it goes right through the far north area and involves Eabametoong and Mishkeegogamang, and it goes to an existing northern boreal initiative. It's a joint land use planning exercise for these two communities, and these communities saw the opportunity around hydro and applied for sites around the Albany River. It hasn't been touched, yet they're now looking at a transmission line going right through their territory by Hydro One Networks.

I show these other maps where the far north is, trying to demonstrate where new transmission that some of the provincial agencies are looking at goes right into the far north, yet they won't touch our applications. They won't enable us to move forward on renewable energy opportunities, which I just find perplexing.

So the broad policy statements I just showed in here to talk about conservation, economic and social: I just don't see the economic; I really don't know. And in this far north planning model that's been sort of shared with communities and the public around community land use planning, broad-scale planning, what's missing is, where is the project planning? When you look at enabling lines, you're looking at linear corridor studies, which is almost the same set of data that you have to collect when you're looking at land use planning. In order to trigger the money, either by government sources—because they want to make sure that you apply for the sites so that you have site control. That's what triggers the money. That's the first step, just like mining.

Within the energy sector and in crown land, when you're talking about renewable energy in northern Ontario, you're talking about crown land. When you're talking about crown land, you're talking about the Ministry of Natural Resources. And now, when you're talking about the Ministry of Natural Resources in northern Ontario, you're talking about the Far North Act, and it's a showstopper right now for our projects. Even the government funding said, "Do you have control of the site?"—which is an application. So I'm having a tough time talking to our chiefs, asking me where we stand with MNR, even though MNR has a renewable energy unit that's supposed to facilitate, but it's frustrating our projects.

So I think, going forward with the Far North Act, it's not enabling communities. It's not an opportunity-driven legislation. The way it's reacting to our projects, our applications, it's frustrating them, it's not facilitating them, even though they have policies that are supposed to enable communities to get involved in the energy sector. It's the same ministry.

People are going through the transcripts of 153 pages and people are talking about a scientific advisory council through this Far North Act. I think you should have an economic advisory council that includes the Ontario geological survey, the Ontario Power Authority and the

Hydro One Networks, so that they can do development planning, linear corridor planning. To do site investigations around hydro and wind takes a couple of years, and we lost a window of opportunity here in the summer because they won't touch our applications. I think with wind it's going to be the same thing. A flood of applications went into the James Bay area; they haven't processed one of them. It's very frustrating, to say the least. We have all this messaging from all the other ministries about creating opportunities, economic opportunities, for First Nations and we're acting upon them, and all the programs and supports, yet MNR—and I think it has a lot to do with the Far North Act—is not helping us at this point in time.

That's all I have to say.

The Acting Chair (Mrs. Linda Jeffrey): You've left us with about two minutes per party to ask questions, beginning with Mr. Bisson.

Mr. Gilles Bisson: I want to thank you because that was quite a good presentation. I think it sums up where we're at. The government has announced some measures that are great on the surface, but when it comes to the actual delivery are not really advancing the cause of economic development and prosperity for those living in the north and, quite frankly, for First Nations.

One of the things you're saying here, and I thought it was interesting, is that you're looking for an economic development council to be in the legislation that would be empowered to take a look at economic opportunities so that we can better identify what possibilities exist. Is that an amendment that you're asking for in the act?

Mr. Michael Fox: I have problems with the act in general because it's not enabling us. What I see is that the lion's share of the activity and funds today is being spent on scientific studies. I just came from Winisk a month ago—MNR wants 50 beds. The junior exploration companies follow the First Nations protocol when it comes to shutting down their operations during hunting season—and then we saw planes going around. Well, it wasn't junior exploration companies; it was the caribou study guys disrupting the hunting. I already know that studies are being conducted around caribou and wolverine. There's a whole suite of studies I can submit to you that they're doing, and I know those studies are the focus right now. I just think, where are the OGS studies for the economic evaluation of the potential in those areas?

Mr. Gilles Bisson: Just to be clear, you're saying, withdraw the act and come back at it.

Mr. Michael Fox: Yes.

Mr. Gilles Bisson: One of the comments that somebody else has made to me, and I thought it was interesting—you just touched on it now—is that the protocols are in place for mining companies and forest companies and energy companies that come in contact with First Nations, but those protocols aren't followed by provincial ministries: MOE, labour, MNR, MNDM. Can you elaborate a little bit more for the record?

Mr. Michael Fox: I think the Ontario geological survey, of all the agencies of Ontario, has probably had

the best track record of engaging First Nations in the far north and has done a lot of capacity and communications initiatives with communities to enable them to understand what a geological survey is and how to take advantage of those opportunities. I think the Ministry of Energy has done a lot in the last six months, through ministerial directives and other means, to get communities prepared around these opportunities. But the first starting point, again, when it comes to renewable energy, is crown land and—

The Acting Chair (Mrs. Linda Jeffrey): Thank you.

From the government side, Ms. Mitchell.

Mrs. Carol Mitchell: Thank you, Mr. Fox, for coming and making your presentation today.

You have spoken very eloquently about opportunities. Your focus has been on renewable energy, and you've talked about transmission. I wanted to give you the opportunity to speak specifically about the hurdles that you're facing in moving forward with renewable energy and transmission lines and where you see things going.

One of the things that I wanted to go into a bit more detail on is the opportunities. In order to ensure that they remain in place, we have to have a process in place, and community planning is a part of that. Do you not see that as part of the far north—and this as enabling legislation that will be able to put processes in place to open up the far north for opportunities?

Mr. Michael Fox: What I see now is that the priority is the scientific studies being done. Where the money is for the community land use planning, I have no idea. Where the money is for other infrastructure needs the communities have around all-weather roads and utility corridors—you're talking about 26 diesel-dependent communities. When you want to displace diesel, you've got to talk about renewable energy. When you talk about renewable energy, you've got to talk about crown land, and that takes a lot of collaboration with MNR. I just don't see that that's their priority right now. Evidence of that that I'm submitting is that we submitted our applications and they haven't moved on them.

1150

Mrs. Carol Mitchell: I understand that, and you clearly have laid out the vision that we share. Just so that you know, my riding produces 25% of the energy and I can tell you that all of the studies that are needed and the community participation and the processes in place will be what you need down the road as you see renewables come forward. I know that at this stage it must seem like a very frustrating experience but it does help to see development happen in the long run. I just encourage you to continue to work. We hear your concerns and we will take them back to all ministers. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. I've had the privilege to spend some time in Peawanuck. I'm going to ask you a number of questions because I know we have a limited amount of time. Some

of it will be to just kind of give an understanding to some of the committee members.

How many polar bear tags are there allowed in Winisk right now; do you know?

Mr. Michael Fox: Polar bear tags?

Mr. Jerry J. Ouellette: Yes. There used to be seven.

Mr. Michael Fox: I'm not updated on that.

Mr. Jerry J. Ouellette: That's okay.

Basically, the community there runs all its energy on diesel generators?

Mr. Michael Fox: That's right.

Mr. Jerry J. Ouellette: How do they get the fuel there and how long do these storage tanks and the units have to work? What this does is it gives the committee an understanding of the impact that wind power generation would have on that diesel current generation.

Mr. Michael Fox: The lion's share of the operating cost for diesel sets within communities—the only source power is fuel and they mobilize that on the winter roads, which the usage is shortening because of—

Mr. Gilles Bisson: You can't build a road through a park.

Mr. Michael Fox: That's right. Otherwise, you have to fly it in. If you have to fly it in, you're looking at between a 20% and 25% cost increase in those communities for fuel because everybody puts a surcharge on mobilizing this fuel in.

Mr. Jerry J. Ouellette: What is the cost of fuel there? Do you know?

Mr. Michael Fox: I can tell you, it ranges depending on where you are. People complain in Ontario about 5.7 cents a kilowatt. Up north it ranges from 25 cents to \$1.03 a kilowatt cost. We're looking for solutions and the solution is within renewable energy, but you've got to deal with Ontario. So we're challenged and we still continue to look for ways to find cost reductions, but it's tough because fuel doesn't go down. It always goes up.

Mr. Jerry J. Ouellette: So wind power would have a huge effect—

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Fox. We appreciate you being here today.

CHIEFS OF ONTARIO

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Chiefs of Ontario, Chief Angus Toulouse. Is he here?

Mr. Gilles Bisson: Chair, just for the information of the committee, as we're waiting for Grand Chief Toulouse to come up, the case of Winisk is interesting because the park was created without the community's consent and the park ends up becoming a problem for them from the perspective of being able to access their traditional lands. So that's what he's trying to get at; it was done without their consent and they've had to live with the effects of that for the last 25, 30 years.

The Acting Chair (Mrs. Linda Jeffrey): Welcome, Chief. Good morning. Thank you for being here this morning. I know you came in a little bit late so I'm going

to do my preamble. You'll have 15 minutes to talk. I have a timer here. If you get close to the 15-minute mark, I'll give you the one-minute warning. Then, when there's time afterwards, if you leave sufficient time, there will be an opportunity for us to ask questions. Whenever you're ready to begin, if you could state your name and the organization you speak for, and you can begin.

Chief Angus Toulouse: Okay. My name is Angus Toulouse and I'm the Ontario regional chief in Ontario. I'm here today to speak on Bill 173, the Mining Amendment Act, and Bill 191, the Far North Act.

Bill 173 is an extremely important legislative proposal for the peace and prosperity of the province, for First Nations people and for all Ontarians. The urgent need to modernize the Mining Act is clear. The current state of provincial mining statute law is intolerable, as it fails utterly to take account of the pre-existing rights of First Nations people, rights which have been reaffirmed and further entrenched in the Canadian Constitution by section 35 of the Constitution Act, 1982. Just as importantly, First Nations rights are recognized as fundamental human rights under the United Nations Declaration on the Rights of Indigenous Peoples. This is a consequence of First Nations constituting peoples holding the right to self-determination within the meaning of international human rights law. A range of competing economic, constitutional and other imperatives comes together in contemplating the task of creating a mining regulatory regime.

First Nations are well aware of the economic significance of mining activities to Ontario's economy. According to MNDM, in 2008 Ontario led the country in mineral production, with an estimated \$9.6 billion in new wealth generation. Northern Ontario's 27 metal mines accounted for \$6.6 billion of this production.

Mining exploration is an important aspect of mining activity. Ontario continues to lead the country in attracting high-risk investment capital, with over \$667 million spent on exploration in 2008, and is forecast to lead the country once more in 2009, increasing its Canadian market share from 24% in 2008 to 28% in 2009.

The developments in aboriginal rights case law respecting the crown's duty to consult and accommodate, and the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, together present an equally important challenge in developing a new legislative and regulatory regime for mining activities in Ontario. This challenge must be met by the government of Ontario in order to uphold the rule of law. This will require ensuring that the new regime includes First Nations as equal partners in resource decision-making in their territories.

Mining legislation and regulations in Ontario therefore must (1) recognize First Nations' role in decision-making respecting the licensing and approval of development and in resource revenue sharing as an aspect of First Nations' rights to self-determination; (2) respect and accommodate First Nations' law respecting the environment as an aspect of First Nations' rights to self-determination; and

(3) respect and implement the crown's duty to consult and accommodate First Nations' rights under the constitution and the crown's obligation to obtain the free, prior and informed consent of First Nations in accordance with international law.

The critical mass of aboriginal rights litigation in every province and territory and the many Supreme Court of Canada decisions since 1982 clearly demonstrate the need for governments to take seriously the entrenchment of pre-existing aboriginal and treaty rights in section 35 of the Constitution Act of 1982. Section 35 is intended to incorporate a fundamental respect for the rights of aboriginal peoples, including our right to benefit and to have a say in how and when our traditional resources are to be developed, when development may affect our life and our ability to prosper. These are the questions that arise when the crown's duty to consult is triggered as a result of developmental proposals that may affect us as peoples and our rights as First Nations.

From our perspective, our constitutional rights as First Nations are but one aspect of our right to self-determination. Our right as peoples to self-determination is now clearly recognized in international human rights law by virtue of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007. The UN declaration recognizes our rights to benefit from resources in our traditional lands as an aspect of our right to self-determination.

The commitment of First Nations people to have our rights taken seriously is demonstrated by the hard-won and growing mass of case law supporting our rights to be consulted and to accommodate our rights to share in decision-making and benefits from our resources. Many of our leaders and citizens have made great personal sacrifices in pursuing litigation and peaceful protest actions. Our leaders and citizens have had to undertake such action when our rights have been dismissed, ignored or trampled despite constitutional protection and international human rights law protection. To preserve the rights of our children and grandchildren to prosper from our lands, we have peacefully asserted our rights. Our people have been willing even to go to jail when the peaceful assertion of our rights has been criminalized by the very governments required to respect those rights.

1200

The Constitution is, of course, the supreme law of the land, and section 35 speaks to the fact that Canadian law incorporates aboriginal rights and aboriginal law. The rule of law and the supremacy of the Constitution mean that the Constitution holds supremacy over criminal law and over provincial resource law and any licences issued under provincial law when these do not conform to the requirements of section 35. So when we correctly assert our constitutionally protected rights, we are not acting above the law; we are in fact ensuring that the rule of law in Canada is respected. Nevertheless, we all know that there can be differences of opinion about what those rights may be from time to time. That is one of the reasons why this legislation is so important.

Bill 173, as we understand it, is intended to establish a much-needed regulatory regime to ensure that First Nation rights are protected and to decrease the risk of conflict over mining rights in general. Bill 173 is intended to ensure there is dialogue to determine what the protection of First Nation rights requires throughout each stage of the mining cycle and before licences and permits are issued. This bill is intended to provide some certainty and consistency in the crown's performance of its duties to respect and protect aboriginal and treaty rights. These duties include its constitutional duties to consult First Nations and accommodate our rights when enacting and implementing regulatory resource regimes.

Bill 173 is in need of some improvements to achieve its objectives of respecting the rights of First Nations and ensuring peace and prosperity in Ontario. Properly implementing the principle of free, prior and informed consent, as recognized by international human rights law, in a joint First Nations-Ontario mining regulatory regime is the focal point of First Nations concerns with Bill 173 in its current form. The respective roles of First Nations and the minister in land use planning as it affects the regulation of mining in northern and southern Ontario is a key part of this concern, as is the lack of attention to the need for environmental assessment and protection measures. While much progress has been made, more is needed in the legislative framework and in the regulatory regime to follow.

In some respects, Bill 173 represents the provincial government's response to several months of discussions between provincial officials and technical representatives of the First Nations grand councils and PTOs in Ontario. The discussions between First Nation technical representatives and the provincial government cannot be considered "negotiations" of the legislative amendments, because First Nations did not consent to the final product and there were several deficiencies in the process leading to this bill that prevent it from being characterized as a consultation process. These deficiencies include the rushed timetable and limited resources that prevented each First Nation in Ontario from being able to properly consider the government's proposals and respond to them based on independent legal advice.

Nevertheless, the discussions that were held did provide some opportunity for the crown to explore and respond to those First Nation views that could come forward in the process. The process provided the government an opportunity to give some consideration to the kind of measures that may be required to protect aboriginal and treaty rights as well as First Nation rights under international human rights law.

Overall, considerable progress would be achieved in advancing improved protection of the aboriginal and treaty rights in provincial mining law if this bill is passed. For example, consultation requirements will be attached to licences for mining exploration. Under Bill 173, before such licences are issued, government officials must first consider whether regulations respecting aboriginal consultation—yet to be developed—have been complied

with. Further, all mining leases, including those already issued, will be made expressly subject to existing aboriginal and treaty rights, and the holders of mining leases will be expressly required to conduct themselves in a manner consistent with the protection provided existing aboriginal and treaty rights under section 35.

The bill anticipates that legislation, regulations and policies alone cannot prevent conflicts over mining issues with First Nations. Accordingly, the bill recognizes the need for conflict resolution mechanisms throughout the mining cycle. In all, there are 14 provisions that collectively require that aboriginal and treaty rights issues be contemplated at each point of the mining cycle. The regulations and policies to follow will be critical in ensuring that implementation of the legislation actually conforms to the requirements of the Constitution.

Despite these achievements, the end product falls short of the recognition of First Nation aboriginal and treaty rights that the First Nations in Ontario were seeking in the statute, and it falls short of constitutional and international law standards. Some examples of the bill's shortcomings from a First Nation perspective are:

(1) The bill does not require free, prior and informed consent by indigenous peoples prior to approval of mining development, contrary to the standard provided by the United Nations Declaration on the Rights of Indigenous Peoples.

(2) The bill does not explicitly mention the duty to accommodate, as an element of consultation, discussions and processes. We note, however, that Minister Gravelle did mention "accommodation" as an aspect of the duty to consult in his statement in the Legislature on May 5, 2009.

(3) The absence of the terms "aboriginal peoples" or "First Nations" in the legislation should be addressed. The bill consistently uses the term "aboriginal communities." This usage is legally imprecise, given that aboriginal and treaty rights are held by aboriginal peoples, not communities.

(4) The lack of complementary legislative initiatives to address aboriginal and treaty rights and consultation and accommodation under legislation dealing specifically with water rights and environmental protection: An important issue to decide in considering this bill is what legislative measures are needed in the Mining Act or elsewhere to reflect First Nations' environmental values. For example, although the "purpose" clause in section 2 identifies the minimizing of the impact of mining activities on public health and safety and on the environment, there are no specific guiding principles or statement of ecological or environmental values provided in the bill to guide decision-making to achieve this purpose. Another issue to consider is what consultation and accommodation measures in a mining context may require the accommodation of First Nations' environmental values in First Nations' traditional lands, consistent with the notion of reconciliation.

(5) Another deficiency that must be addressed in the proposed legislation is the distinction in treatment of First Nations in the north and south in access to partici-

pation in community land use plans and the ministerial discretion to override the outcomes of a community land use planning process. A related issue is the inadequacy of the existing community land use plan system as a mechanism to incorporate First Nations' perspectives into resource management decisions.

The joint process of dialogue between First Nation representatives and provincial officials that formed part of the provincial government's legislative development process was welcomed and appreciated by First Nations as an indication of the province's commitment to take section 35 rights seriously. Nevertheless, First Nations were not asked to consent, and we have not consented, to the specific provisions of this bill. Despite our remaining differences on requirements for free, prior and informed consent in accordance with the minimum standards set by the UN Declaration on the Rights of Indigenous Peoples, First Nations and Ontario have made considerable progress in jointly designing a respectful process of dialogue on important and complex matters of law and policy where mining development and First Nations' rights intersect.

Let me just finish with the last point here. The provincial government has committed itself to further discussions with First Nations' technical and political representatives to discuss the development of these regulations and policies. A letter signed by the Minister of Northern Development and Mines and the Minister of Aboriginal Affairs has been sent to the First Nations leadership in Ontario confirming this commitment.

I just had one little, brief comment on Bill 191. Do you want me to—

The Acting Chair (Mrs. Linda Jeffrey): You've exhausted your time, so maybe you can slip it into your answers to somebody, if that's possible.

Chief Angus Toulouse: Sure.

The Acting Chair (Mrs. Linda Jeffrey): But you're going to be leaving your written presentation with us, so it will be in Hansard, and members will be able to read your comments.

Our first questioner is from the government side: Mr. Brown. You have about a minute and a half.

Mr. Michael A. Brown: Chief Toulouse, would you like to tell us about Bill 191?

Chief Angus Toulouse: Sure. Bill 191 has been rejected by the Nishnawbe Aski Nation leadership. Moreover, they have demanded that the government of Ontario start fresh on a new government-to-government dialogue regarding a treaty-based governance approach regarding the lands of the far north. Clearly, the indigenous peoples who inhabit the far north have treaty rights regarding the control and development of such territory and are entirely justified in seeking more favourable legislation, as they see it, and to ensure that the legislative process is inclusive and respectful of their rights to be consulted and accommodated in accordance with international standards and emerging common law standards in Canada.

1210

Again, on these issues, I can assure you that all First Nations in Ontario are supportive of the aspirations of the

far north First Nation inhabitants, our brothers and sisters, to ensure that they are properly dealt with.

The Acting Chair (Mrs. Linda Jeffrey): You have 30 seconds left. No? If it's a quick yes or no, you can.

Mr. Michael A. Brown: Angus usually takes longer. I just want to reiterate what you mentioned at the end of your presentation on Bill 173, that in many ways, Bill 173 is enabling legislation that will be structured by the regulations that come out of it, and that the government's commitment is to work closely with the leadership and First Nations to resolve or work together with you on those regulations. So I'll just leave it at that.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation, Chief Toulouse. We've heard a couple of things, and you specifically mentioned the need for prior consent on traditional lands. From a prospector's perspective, what should the ministry do? Do you envision the need for a—in the past, when I got my first prospecting licence, they issued maps that showed areas that you could access. Do you think the ministry would be wise in preparing maps that showed accessible staking areas and then consenting staking areas, just to remove or eliminate some of those areas of concern immediately?

Chief Angus Toulouse: If you're asking me, "Doesn't a claim of free, prior and informed consent essentially amount to a veto on development, and wouldn't such a requirement simply lead to more conflict, more delays and less certainty and less investment?", no. Depending on the design, again, of the overall legislative and regulatory regimes and the provisions for dispute resolution, I think if we were to have that understood—and what we're very aware of is that the federal and provincial governments and systems have intergovernmental relations and co-operation that goes on. There is essentially an effective veto in terms of the decision-making over the common areas of jurisdiction. As far as that goes, I understand that both federal and provincial governments have developed mechanisms and some kind of conventions that would resolve disputes without preventing development. Again, I keep insisting that the principle of free, prior and informed consent is simply a requirement for the kind of intergovernmental collaboration that needs to take place. As I pointed out, our pre-existing right to self-determination of First Nations, which includes the right to benefit from the resources that are in the far north in mining and so on, is one thing that we continue to insist on as implementation of our treaty rights.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just to pick up on Mr. Brown's point in regard to regulations, the reality is, far too often, regulations are drafted without real consultation with organizations that are affected. The real problem with regulation is that it only takes an order in council to change the regulation. There's no process for peer review, other than, it gets gazetted and you can comment on it

once the regulation is done. I prefer, personally, having a system where we put as much of this as we can in the legislation so that everybody knows what the rules are, and if there is going to be a change, there is some sort of public debate through the Legislature. I'm wondering if you would prefer to see more of it in the legislation rather than the regulation.

Chief Angus Toulouse: Absolutely. It would be much more beneficial, I believe, definitely for the First Nations, to include as much of it in the legislation.

The whole issue around the government's role in consultation and accommodation is something I think should be more clearly identified, even though I indicated and closed off by saying that we're going to continue to work towards the regulations in the same manner that some of the development took place, which is having our technical people working with the government people in terms of wanting to ensure that our claim for free, prior and informed consent, as much as possible, is addressed throughout the regulations and also the legislation.

Mr. Gilles Bisson: Do I have time for another question?

The Acting Chair (Mrs. Linda Jeffrey): No.

Thank you, Chief Toulouse. We appreciate you being here today. Thank you for your delegation.

Committee, this brings our list of delegations for this morning to a close. We'll be recessing and reconvening in 45 minutes. We'll be starting promptly at 1 o'clock.

The committee recessed from 1215 to 1304.

NORTHWESTERN ONTARIO PROSPECTORS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Good afternoon. Could I call the Standing Committee on General Government to order, please? We're here to discuss Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North, and we're resuming our hearings.

Our first delegation this afternoon is the Northwestern Ontario Prospectors Association. Are you Mr. Hunt?

Mr. Dave Hunt: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Welcome. Thank you for being here today. You have 15 minutes for your delegation. If you get close to the 15-minute mark, I will give you a one-minute warning. Whenever you're ready to begin, if you could state your name and the organization you speak for, and you can begin.

Mr. Dave Hunt: Okay. Thank you and good afternoon. My name is Dave Hunt. I'm vice-president of the Northwestern Ontario Prospectors Association. NWOPA, as we're called, represents the interests of prospectors and explorationists throughout northwestern Ontario. I'm also a director of the Ontario Prospectors Association, a fellow of the Geological Association of Canada, a member of the Prospectors and Developers Association of Canada, PDAC, and I've worked in the industry, both in the Ontario government and in exploration, for more

than 40 years. I've been a consulting geologist for the last 10 years.

The mineral exploration industry needs three things to be competitive. We need access to land, we need security of mineral tenure and we need a stable political and business environment.

PDAC estimates that all of the production-stage mining operations established in Ontario to date have occupied approximately only 0.03% of the surface area of the province; that's about 250 square kilometres. However, because mineral deposits are buried and statistically only one in 10,000 mineral occurrences ever becomes a mine, a large land base of favourable geology is necessary to ensure maximum chances of success. Exploration activity, up to the advanced project stage, has a very minimal footprint on the land.

Because of the small possibility of actually discovering a mineral deposit robust enough to eventually become a mine and to attract the significant investment financing required, explorers want to be sure that their mining rights are secure throughout the exploration and development process and that mining will be allowed to proceed if the project is successful, as long as legal and environmental requirements are met.

The high-risk financing required to bankroll mineral exploration and development is international in outlook. Money will flow where the risks are perceived to be lowest and the rewards greatest—anywhere in the world. Political or regulatory uncertainty will divert investment to more favourable jurisdictions, resulting in loss of jobs and wealth creation.

In the past several years I've trained a lot of young geologists, and one of the first things I tell them is, "Always make your descriptions complete. If you leave room for questions, those questions will always be negative." Both Bills 173 and 191 will rely very heavily on regulations for their administration. These regulations have not yet been written, and therefore we are being asked to comment here on very unfinished business. In addition, regulations under these acts can be revised and rewritten more or less at will, without legislative scrutiny. This is creating concern in the industry regarding what future conditions on exploration and mining might be imposed arbitrarily. Some of these issues are discussed below.

Map staking: Explorers in the province are evenly divided on the issue of map staking versus ground staking. Some prospectors and contractors make a significant proportion of their livelihood staking claims. This will disappear with the advent of map staking. There is also concern that staking as an entry-level position for future prospecting and exploration work will soon be a thing of the past. In addition, claim staking is a significant first foot on the ground for First Nations people to gain interest and experience in the mineral exploration business.

There is also a fear that map staking will allow big players to tie up large blocks of ground and sterilize it from exploration activity. It is not known if the assess-

ment regulations will deal with this issue, but the issue brought up this morning about payment in lieu of assessment work is critical in this issue. It would allow wealthy companies to tie up lots of ground and not explore it properly.

1310

Finally, map staking will depend on reliable high-speed Internet services, which are still absent from much of rural northwestern Ontario.

Work plans and exploration permits: Exploration permits are already standard practice for advanced exploration projects. However, work plans are a new concept in Ontario, and explorers have concerns regarding whether there will be adequate funding and manpower dedicated to ensuring the system runs smoothly and efficiently, without untimely delays; whether the work plan system will be flexible enough to accommodate rapid changes in exploration plans and funding, as projects develop; and whether the director of exploration system will turn MNDMF, I guess it should be now, from advisers and supporters, as at present, into policemen.

Those of us in the business know that the existing claims management system is often hopelessly bogged down and backlogged. We remember that the old MNR work permit system became completely inadequate over time because of lack of proper funding.

Maintaining best exploration practices: Under proposed Bill 173, prospectors will be required to pass a prospector's awareness course so that they will be familiar with ethics, stakeholders' rights, aboriginal consultations and best practices. This is all well and good, but 90% of exploration is not done by licensed prospectors but by line-cutters, geophysical operators, geologists, diamond drillers, field technicians etc., who often have a much greater impact on the public than do prospectors.

Also, the majority of exploration projects are supervised by geologists, and while the law states that geologists practising in Ontario must be licensed here and be familiar with Ontario regulations, ethics and best practices, this is not actively enforced, and many companies bring in supervisors and geologists from out of province or even out of country who are not familiar with provincial regulations. This has led to problems in the past and will continue to do so, if not addressed.

First Nations consultations: Consultations with First Nations have become almost a matter of routine for the exploration industry, especially as projects grow to advanced stages in the far north. Most companies realize that they must be good corporate citizens with local communities in order to be successful. Agreements with First Nations communities are also becoming one of the requirements to attract financing for exploration projects as they develop. Bill 173 formalizes these consultations within exploration plans and exploration permits.

Nevertheless, concerns remain that the government continues to shirk its mandate to consult with First Nations and come to overall agreements, as mandated by the Supreme Court, and continues to download these

activities onto industry. The consultation system remains somewhat haphazard, with little sign of improvement over the near term. I note, in the Thunder Bay paper, that the KI situation is starting up again.

First Nations consultations prior to claim staking will remain a non-starter in the industry because of confidentiality issues.

Bill 191, the Far North Act, intends to preserve 225,000 square kilometres of land that is already preserved by its isolation and low economic potential; allows First Nations to direct community land use planning but only under the fatherly direction of MNR; excludes exploration and mining, virtually the only realistic generator of employment and wealth for First Nations communities in the region, from the planning process; underfunds the scientific research, particularly in economic geology, necessary to minimize planning damage; has the potential to sterilize economically high-potential mineral areas and to prevent future development of transportation and service corridors through a patchwork of parks and community-based land use plans; and has the potential to create uncertainty and loss of investment in the mineral industry for up to 15 years, through a lengthy land use planning process.

This bill has been justifiably condemned by both PDAC and NAN. At one point, NAN had threatened to close down the north if the bill proceeded.

I have a couple of maps here, just to illustrate the size of 225,000 square kilometres. It's a huge area. It's nearly one quarter the size of the entire province. If you put that area in southern Ontario, it would sterilize the whole southern part of the province almost as far north as the New Liskeard area. It would be almost impossible, even if it's a network of connected sites, not to sterilize some ground of high mineral potential, even with the best advice and planning available.

Periodically, the Fraser Institute surveys mining companies as to the most favourable places in the world to explore and develop. In 2008-09, seven Canadian provinces ranked in the top 10 in the world. Ontario was number 10, but our closest provincial neighbours both ranked higher—Manitoba at number eight, and Quebec in first place. Quebec still builds roads to resources, while Ontario plans to sterilize one quarter of the province. Even though much of the financial community and a considerable portion of the exploration community are not yet aware of or familiar with Bill 173 and Bill 191, there are indications that financing is beginning to flow to Quebec projects over those in Ontario. Unless Ontario remains competitive with the rest of Canada and the world, our reputation as a choice place to invest in mineral exploration and development will surely decline.

The mining industry is the largest private sector employer of aboriginal people in the province. Ontario's mining industry generates \$10.7 billion in mineral production and tax revenues each year, and each mining industry employee accounts for \$660,000 of output annually.

Bill 173 and Bill 191 do little to encourage investment in Ontario's mineral industry. Indeed, the Far North Act

will be a major disincentive and will tarnish the entire province with its poorly considered policies.

Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Hunt. You've left about two and a half minutes for each party to ask questions. Our first questioner is Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much for your presentation.

You talked about the map staking and the payments in lieu in order to tie up lands. I noticed in this morning's Thunder Bay Chronicle that over 2,900 hectares is being developed and creating investment in the western part of the province. Do you think that the current process has the opportunity to tie up as much land, by map staking and by payments in lieu of—or are there options there that they're going to do it anyway, regardless?

Mr. Dave Hunt: The impression I have is that map staking is going to be phased in over five years and there won't be a dual system. Once it's phased in, it will just be map staking. That's my take on things.

In the current system, there's no provision for payments in lieu of assessment work. You have to do the work or you lose the claims and they pass on to someone else.

Mr. Jerry J. Ouellette: In other words, it's a lot harder in the current system to tie up lands to minimize development by potential competitors.

Mr. Dave Hunt: Yes. You can't tie up lands and just sit on them for as long as you make payments on them.

Mr. Jerry J. Ouellette: So the park, the 225,000 square kilometres, as you so specifically demonstrated here, has a significant impact. What do you think that will do as it relates to investment in the mining sector in the province of Ontario? Will there be a holdback until the park boundaries have been decided, or do you think that it'll bring some certainty to the mining sector, to say, "Okay, this area is protected, and these areas are open and we can move forward on them"?

Mr. Dave Hunt: I'm not sure at which stage in the process the park boundaries would be finalized, or whether they wouldn't not be finalized until all the community-based planning is completed. The community-based planning is a long-term process.

I'm not sure what the time frame for the park is, but I don't think the financing is there or the time is there to—

Mr. Jerry J. Ouellette: Certainly, the uncertainty—

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry, the time has expired. Thank you. Mr. Bisson.

1320

Mr. Gilles Bisson: Well, the payment in lieu is an interesting one, because I think in the end it will lead to certain individuals or companies holding on to land and doing really no geophysical work on that land. If that's the case, aren't we shortchanging ourselves as a province as far as potential revenue from what might be our mines? My question is, if you allow payment in lieu to stand the way that it is in the legislation, could it lead to

actually less exploration happening—less work on claims, I should say?

Mr. Dave Hunt: It could, if that was the case, yes, if certain big players tied up land and just sat on it.

Mr. Gilles Bisson: What's been the case in Quebec? Do you know? Do they have payment in lieu? I know they've got map staking.

Mr. Dave Hunt: I'm not sure. I haven't followed the Quebec—some provinces do have payment in lieu of assessment. I'm not sure what effect it has.

Mr. Gilles Bisson: Okay. Now I know a great research question.

On the issue of the prospector's awareness you pointed out—and I don't know why I didn't think of it, it's so simple—that after the claim has been staked out by the prospector and the claim has been sold to somebody, it's the geologist who runs the actual exploration. Yet there is no real requirement for them to take sensitivity training to properly know what the rules are, and as you pointed out, a lot of the geologists aren't from the area. What are you arguing? Are you arguing that they be given sensitivity training?

Mr. Dave Hunt: Well, I'm just pointing it out. I'm not sure what the solution is, but there are lots of players who work on a mineral property once it gets past the prospecting stage, as you say, and the opportunity to the mining company—it's out of his hands and it's into other people's hands.

Mr. Gilles Bisson: So to make the requirement of prospectors and not others who are the ones who are actually going to be doing most of the work that might be in conflict with First Nations or others—to exclude them from that is a bit of a problem, then.

Mr. Dave Hunt: I think so. I think it's kind of a hole in the legislation that's not solving the whole problem. And a lot of these other groups—diamond drilling, for instance, or mechanical stripping with backhoes and things—have a lot of a bigger impact on the local population and the landscape than any work that a prospector might be doing.

Mr. Gilles Bisson: Do I have time for one more?

The Acting Chair (Mrs. Linda Jeffrey): No. Sorry, you'll have to talk about it afterwards. From the government side: Mrs. Mitchell, are you going to ask a question?

Mrs. Carol Mitchell: Mr. McNeely. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. McNeely.

Mr. Phil McNeely: Mr. Hunt, thank you for a very good presentation here. Going back to page 4, "There is fear that map staking will allow big players to tie up large blocks of ground and sterilize it from exploration activity": Those are real fears for the people of the north.

Mr. Dave Hunt: Some of our members in NWOPA have that fear, yes, that big players, Chinese companies or something, could just stake up huge tracts of ground and sit on them until they decide to do something with them. It's not a fear of everybody's; I think there are a lot of people who just figure it would be too much trouble,

and it doesn't really happen in other provinces. It's not something that's a proven fear elsewhere, I don't think, but it's something that could happen.

Mr. Phil McNeely: And the second: The lack of high-speed Internet services for many individual prospectors is a concern for your organization.

Mr. Dave Hunt: Yes, especially for a lot of the older prospectors. Some of the First Nations communities and even places along the Trans-Canada here have barely adequate Internet and cellular communications, if any.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today. We appreciate your delegation.

WHITEWATER LAKE FIRST NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next group is the Whitewater Lake First Nation, Chief Arlene Slipperjack.

Mr. Gilles Bisson: As the chief is taking her seat, I have an interesting point for some follow-up: There's been a delegation from China, from the government, that's gone up to Attawapiskat because they're interested in the Ring of Fire. One of the fears is that they could very well decide to use payment in lieu as a way of holding up land. Then what?

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Bisson.

Welcome, Chief. Thank you for being here. As you get yourself settled, when you begin, if you could announce your name and the organization you speak for for Hansard. Then when you begin, you'll have 15 minutes. I'll give you a one-minute warning if you get close to the end. Afterwards, there will be an opportunity for us to ask questions of your deputation.

Chief Arlene Slipperjack: Okay. Due to the inconvenient time of the hearings—NAN chiefs are having their Keewaywin Conference, so I was not able to provide copies of my submission, but I will have them delivered to your office next week.

Dear committee members, my name is Arlene Slipperjack. I am chief of Whitewater Lake First Nation, one of the 49 Nishnawbe Aski communities. I have with me today Pauline Cornell of Whitewater. I would like to acknowledge this opportunity to officially record the position of the Whitewater Lake First Nation on the two bills before the committee. My oral presentation today will be based on a written submission, copies of which Whitewater First Nation will provide next week.

Whitewater is a member of NAN—that's Nishnawbe Aski Nation—Windigo Tribal Council, Chiefs of Ontario and the Assembly of First Nations. My position, taken by WLFN on Bills 173 and 191, is without prejudice to the position of these sub-regional and regional organizations.

Whitewater Lake First Nation is located approximately 70 kilometres or 45 air miles northwest of Armstrong, Ontario on Whitewater Lake. The community is accessible by float plane or boat in the spring, summer and autumn, and by ski plane and snow machine in the

winter. In other words, Whitewater Lake First Nation is a NAN fly-in community. There is no all-weather road access.

This is a shocking state of affairs given the relative proximity of the Whitewater Lake First Nation to Armstrong. It makes everyday life at Whitewater extremely difficult. The relative isolation of the Whitewater Lake First Nation has slowed down its social and economic development.

Our people have occupied this territory since time immemorial. When the federal government and the provincial treaty commissioners for Treaty 9 visited our area in 1905, we were lumped into a nearby larger band: Fort Hope. The same thing happened to other NAN communities, such as Summer Beaver. The mistake was based on faulty background information supplied by the Hudson's Bay Company and the Indian affairs agency of the day.

The failure to recognize Whitewater Lake First Nation as a separate Indian Act band had severe financial and other consequences for the people of Whitewater Lake First Nation. Whitewater is still involved in claims and other processes aimed at achieving band status.

In 1983, Ontario established Wabakimi park, a relatively small wilderness park largely to the south of the Whitewater Lake First Nation territory. In 1997, Ontario unilaterally expanded the Wabakimi park by sixfold, making it the second-largest provincial park in Ontario, second only to the huge Polar Bear park on Hudson Bay.

Wabakimi now covers much of our traditional territory. Our territory does extend north of Wabakimi and the so-called north area directly impacted by Bill 191. The expanded Wabakimi Provincial Park imposes severe restrictions on what we can do on our traditional lands. It is the subject of a park management plan to be controlled by others. We are informed that the park management plan remains incomplete. Nearly 12 years after the creation of the park, our request for proper consultation and accommodation and related resourcing in the planning process remains unfulfilled.

Whitewater Lake First Nation objected before the expansion of the Wabakimi. However, these objections were brushed aside. We expressed our concerns that the park would limit our traditional pursuits and would significantly limit our economic opportunities. Ontario acknowledged that there would be some restrictions on activities within the park but promised our people could continue with our traditional pursuits. Ontario has promised that our people would be able to develop other pursuits, such as tourism. Ontario stated that it recognized the park expansion was a major impact on the economic future of our members and stated it would work with our community to address several related issues, including the following:

- continued access to our traditional lands and the use of resources;

- identification and protection of sites with cultural, ceremonial and religious significance;

- provision of access;

- identification of and access to economic and employment opportunities;

- a role in the management framework of the park and decision-making process; and

- development of mechanisms for co-operation in conservation and management.

These commitments, made as far back as 1996, remain largely unfulfilled today. We do not feel that our rights and interests have been respected and protected.

Today, 104 years after the signing of Treaty 9 in 1905, Ontario continues not to fully recognize the community status of Whitewater. Ontario has benefited immensely from the treaty but begrudges our very official existence. In 1997, a mere 12 years ago, Ontario forged ahead with the Wabakimi Provincial Park expansion, ignoring our concerns and protestations. We are now in the desperate situation of being almost totally engulfed by the park. This has completely stymied our efforts to get involved in modern terms of economic development such as mining, forestry and hydroelectric projects. We cannot even get a road into our community. Recently, MNR questioned the legality of our community buildings on Whitewater Lake and threatened unspecified forms of enforcement. Is Ontario proposing to bulldoze our ancient community as the final step in its grand design known as the Wabakimi park? What has happened to Whitewater Lake First Nation is a dire warning for the many NAN communities that are about to be engulfed by the 225,000-square-kilometre protected area called for by Bill 191.

1330

The response of Whitewater Lake First Nation with the Wabakimi park should stand as a warning of the risks for the First Nations associated with parks and protected areas. They do not benefit First Nations. They choke off the future economic development opportunities. When they are created, they are portrayed by Ontario as benign but the reality is the exact opposite.

Bill 191: Whitewater Lake and many other NAN communities are now facing the biggest park or protected area of all, the infamous superpark of at least 225,000 square kilometres. This is about 10 times the size of Polar Bear Provincial Park, which is already the biggest provincial park in Canada. Based on the experience of Whitewater Lake First Nation and Wabakimi, the only reasonable conclusion for NAN First Nations is that the superpark should be viewed as an existential threat. This is not an exaggeration as Ontario is proposing to permanently freeze half of the traditional territory of NAN without reason and without meaningful discussion. Ontario is not prepared to ban logging in the iconic Algonquin Provincial Park, which is only a pleasant drive from Toronto, but it is more than happy to ban logging and all other forms of modern economic development in half of the northern part of NAN, an area equivalent to 30 Algonquin parks. Ontario is prepared to put aside 50% of the far north for caribou, polar bears and wolverines; however, Indian reserves do not even amount to 1% of the area. Whitewater Lake has nothing. Why the disparity in treatment? The only honest answer to this question should be deeply troubling to the committee and Ontarians.

The Supreme Court of Canada has been pretty clear-cut since the *Guerin* case in 1984. The Canadian governments owe a constitutional and fiduciary duty to consult and accommodate First Nations when a proposed policy or legislative measure threatens to affect First Nations' rights in a significant manner. When the proposed measure is likely to have a fundamental effect, the duty rises to the highest level, seeking the consent of First Nations before proceeding. The duty to seek consent was established in Supreme Court decisions such as *Delgamuukw*. The constitutional and fiduciary is tied to section 35 of the Constitution Act in 1982. The duty to consult, accommodate and seek the consent of First Nations as defined circumstances is supported by the 1997 UN Declaration on the Rights of Indigenous Peoples.

The fiduciary binds the provincial crown as well as the federal crown. This is particularly true in the case of Ontario and Treaty 9. Ontario pre-negotiated the terms of Treaty 9 with Canada before it was imposed on NAN First Nations. Ontario was represented by a commissioner in the treaty-making process and signed off on all the reserves. To this day, Ontario continues to pay the \$4 treaty annuity that goes to all Treaty 9 members. Ontario may have been the practical beneficiary of Treaty 9.

While the general consultation period before the tabling of Bill 173 was a positive, the bottom line is the content of Bill 173 is not consistent with the positions tabled by most First Nations. While there has been some pre-bill consultation, the bill has failed to accommodate most First Nations' positions in a reasonable way.

The consultation and accommodation process proposed by the government in Bill 173 does not meet the constitutional standard. The bill was tabled on April 30. There will only be five days of committee hearings, August 6 and August 10 to 13. The committee will be visiting Toronto and some mid-northern towns—Thunder Bay, Sioux Lookout—but no First Nations communities. The consideration of Bill 173 will be blended with Bill 191. The deadline for written submissions to the committee is September 4. Given this schedule, it is reasonable to assume that the government will move to pass Bill 173 into law sometime this fall.

The fact that the bill has a long list of amendments to the existing Mining Act, as opposed to a new, consolidated version of the Mining Act, makes it quite inaccessible except to mining law experts and other technicians. The cross-referencing required to the existing act makes the package impenetrable for most First Nations citizens and even governments.

The scope of the constitutional duty to consult, accommodate and sometimes seek First Nations consent depends on the nature of the government policy or legislative proposal. As described, Bill 173 clearly engages the provincial duty to consult and accommodate. Altogether different considerations apply in the case of Bill 191. Reasons are set out in more detail below.

Bill 191 is a fundamental threat to Whitewater Lake First Nation and other NAN First Nations. In brief summary, it does two things. First, it gives Ontario

control of land use planning in the far north area. Second, it imposes an interconnected protected area of a super-park of at least 225,000 square kilometres, an area equivalent to the Canadian Maritime provinces. This will ensure that NAN First Nations will remain part of the Third World forever.

Because of the absolutely fundamental nature of Bill 191's impact on First Nations rights and interests, it is clear that the provincial constitutional duty rises above mere consultation and accommodation. As a matter of constitutional law, the province must seek the consent of all NAN First Nations affected by the bill, including Whitewater Lake First Nation. This has to be spelled out. The province must go to each individual First Nation affected by the bill, have discussions, and then seek its consent. Each First Nation, including Whitewater Lake First Nation, has a veto over profound impact as a matter of Canadian constitutional law.

The actual process followed by the government on Bill 191 does not measure up to even the duty to consult and accommodate, let alone the legal duty that applies here; for example, the duty to seek consent. If the government proceeds on its present course, this means that Bill 191, even if passed by legislators, will be fatally flawed. It will be constitutionally invalid and a legal nullity.

In July of 2008, the Premier, out of the blue, announced an intention to create an interconnected boreal forest protected area of at least 225,000 square kilometres in the far north; that is to say, the northernmost part of the traditional territory of Nishnawbe Aski Nation.

The Acting Chair (Mrs. Linda Jeffrey): Chief, can I interrupt for a second? You have one minute left. Okay?

Chief Arlene Slipperjack: Okay.

On the contrary, First Nations inland, including Whitewater, are still deeply unhappy about the park's protected area imposed unilaterally in the province in the 1970s, 1980s and 1990s. The boreal super-park seems to result from behind-the-scenes discussions between the province and certain environmental non-governmental organizations focused on the boreal forest. The plan is to make the super-park official at an international climate change meeting in Copenhagen in December of 2011.

I shall move over to the conclusion. I had a lot I had to say, because it was based on my submission that I was going to prepare, but due to the NAN Keewaywin conference, I wasn't able to do that.

Anyway, in conclusion, Whitewater would like to acknowledge this opportunity to present to the standing committee. My words have been blunt but this is a measured and necessary response to the bills before the committee, especially Bill 191.

Bill 173, the Mining Amendment Act, contains some relatively progressive measures that in practice may make a positive difference, at least compared to the current Mining Act. However, there are significant problems that should be rectified before the bill goes further. In particular, regarding the free-entry systems that are still at the heart of the bill, the consultation rights are too vague and weak to be acceptable at this stage. The minis-

terial control and discretion for resolving disputes is not balanced. The relevant provisions should be revised with First Nations support to reflect real consultation, accommodation and, in some instances, consent. It is necessary to enshrine an acceptable system of revenue-sharing.

1340

Bill 191 is a disaster. It violates every important norm from the treaty relationship. The bill is premised on the provincial control of the entire off-reserve territory and establishes a back-breaking park of at least 225,000 square kilometres, one of the world's largest parks. The bill should be withdrawn and fundamentally modified. Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Our first questioner will be Mr. Bisson. You have about a minute and a half.

Mr. Gilles Bisson: How many years have First Nations been living in this territory?

Chief Arlene Slipperjack: For thousands of years. When I did research, it goes way back 6,000 years. My family—my grandfather, my great-grandfather, my mother's family, even us—were all born in Whitewater Lake.

Mr. Gilles Bisson: We have timelines that are imposed in order to deal with this legislation. You got 15 minutes to make a presentation. You had to rush through it. What's the big hurry?

Chief Arlene Slipperjack: The big hurry to do this?

Mr. Gilles Bisson: Yes. Why? Should we be in such a hurry?

Chief Arlene Slipperjack: I don't know why the government is in such a hurry to hear the hearings. We have a lot of issues at hand.

Another matter is, the government never gives us time to negotiate for a proper settlement. We're working on a memorandum of understanding. Last week, the MNR office told me, "Our process will be concluded as of August 7." I said, "We haven't even had a meeting yet." We were trying to do this memorandum agreement process with MNR and they wanted to conclude it—now they've extended it to August 27. We haven't even sat down to talk about anything and they've concluded it. That's the way the government treats us.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown.

Mr. Michael A. Brown: Thank you for taking the time to come and see us today. We really appreciate it.

I want to just ask a question of clarification. Have you been recognized as a First Nation by the government of Canada? I didn't quite follow you there. You said you were a part of another First Nation. Are you a separate one now? How does that work?

Chief Arlene Slipperjack: The federal government failed to give us our own separate band status, but at treaty time they told us we could live on our land forever, as long as the rivers flow and the sun shines. "You can live there and nobody will kick you off your land." Well, lo and behold, this Wabakimi park came down around 1995 and they legislated the boundary in 1997. They

wanted us off. We've lived there forever—my ancestors, my great-grandparents, my mother. We were all born there. It's our community. The government has always known of our presence there because they used to send planes to send us out to residential schools.

Mr. Gilles Bisson: They know how to find you.

Chief Arlene Slipperjack: Yes, they knew where to find us when it came to sending people off to school.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you, Chief Slipperjack, for your presentation. I very much appreciate hearing your very concerning perspective on the impacts that have taken place and what may impact as well.

I'm not quite sure I know where Whitewater is. I've been as far as camp 45, I've been to Osnaburgh, but I have not been to the Whitewater area. What side of the park is that located on?

Chief Arlene Slipperjack: We're smack in the middle of the Wabakimi Provincial Park. The lake west of us is Wabakimi. Whitewater is smack in the middle. North of us is Grayson Lake, and on this side is Whiteclay, and south of us is Smoothrock. The closest reserves are Mish in the west, Eabametoong way to the north, probably about—I don't know. I'm not sure how many miles that is: 100 kilometres or so. And then, down the river, on the Ogoki River is the Marten Falls reserve.

Mr. Jerry J. Ouellette: I know that Buchanan was trying to access some blowdown lumber in that area. When I speak to individuals with the former Buchanan company, they were very much wanting to turn over a lot of the community or the far north to the First Nations, because they knew as a business that they could deal with the First Nations communities so long as the government was not involved. Would that be a perspective that you feel would be something to move forward, or do you think—quite frankly, what I hear from a lot of the First Nations communities is that should the Far North Act pass in the form that it is, it would probably lead to a constitutional challenge by the communities in the Supreme Court of Canada.

Chief Arlene Slipperjack: Yes.

Mr. Jerry J. Ouellette: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much, Chief. We appreciate you being here.

Chief Arlene Slipperjack: I will provide you copies of my submission.

NISHNAWBE ASKI NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Nishnawbe Aski Nation. Mr. Beardy? Would he be here? Could he come forward?

You're welcome to bring up people if you want to, if you want them beside you. Please feel comfortable in bringing forward your whole delegation.

Welcome.

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Oops. I know; they can be at the front of the room, but not at the table.

Are you Mr. Beardy?

Mr. Frank Beardy: I'm Frank Beardy, yes.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Is it just you who's speaking, or is anybody else at the table going to be speaking?

Mr. Frank Beardy: I'm going to ask people to speak.

The Acting Chair (Mrs. Linda Jeffrey): Okay.

Mr. Frank Beardy: I'm not going to determine who's going to speak. We travelled many hours, some of us, many miles, and expended a lot of money to be here. I would ask for the indulgence of the committee to overlook the 20 minutes that they've given us, because we are the people who will be directly impacted by this legislation and we want to say our piece to the committee.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Beardy, can I just give you some background? I'm not at liberty to give you more time. I'm just the chair of the meeting.

Mr. Gilles Bisson: Point of order.

The Acting Chair (Mrs. Linda Jeffrey): Can I just set this—and then I'll come back to you.

What I am directed to do is to give you 15 minutes to speak and then to offer time to the committee to ask questions of your delegation.

Mr. Frank Beardy: Okay.

The Acting Chair (Mrs. Linda Jeffrey): That is all I'm empowered to do. So I will go to Mr. Bisson for some additional advice.

Mr. Gilles Bisson: Madam Chair, as you know, this committee can do what it decides to do, and I would ask for a motion. I'm moving a motion that we allow NAN the time that they need to make their presentation.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion?

Mr. Gilles Bisson: We may as well. This is their shot.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Rinaldi?

Mr. Lou Rinaldi: I would recommend that before we vote on that motion we qualify the time. I mean, whatever time they require—as you know, that's pretty open-ended. I don't think it's fair for the other deputants who were here for the whole week.

Mr. Gilles Bisson: I would only say that I know First Nations people to be very patient. They've been here a long time. They know the land and they have something to say. I presume they're not going to speak until tomorrow morning and we will have reasonable time to deal with the issues, so I think we allow them what they need.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette?

Mr. Jerry J. Ouellette: Madam Chair, I know the mandate of the committee was very specifically laid out, that if other presenters wish to come forward and make presentations in the time slots available, they would be made available. We should take that into consideration

when we make this decision to give Nishnawbe Aski the opportunity that is needed.

The Acting Chair (Mrs. Linda Jeffrey): Any further discussion? Mr. Bisson?

Mr. Gilles Bisson: I would just say that as far as the worry and all that about other ones, Matawa First Nation, which is actually Constance Lake, is here, and I'm not sure about Christine, but I can imagine that Christine wouldn't have a problem with that. Where is Christine? In the background, there.

Interjection.

Mr. Gilles Bisson: The last deputant.

The Acting Chair (Mrs. Linda Jeffrey): You mean Catharine. It's Catharine.

Mr. Gilles Bisson: Oh, I thought it was Christine, sorry. Anyway, let's vote on the motion and allow it to happen.

The Acting Chair (Mrs. Linda Jeffrey): Again, I think Mr. Rinaldi asked for some boundaries to the time. That was a friendly amendment, I believe, rather than—

Interjection.

Mr. Frank Beardy: Maybe half an hour, 40 minutes, an hour? I don't know. It depends on how many people speak.

1350

The Acting Chair (Mrs. Linda Jeffrey): Mr. Rinaldi.

Mr. Lou Rinaldi: No disrespect to anybody, Mr. Bisson, but some of us do have some other commitments. I'd like to hear what they have to say, but we do have some time constraints as far as travel plans, as you know. So I would be prepared to extend the time, to double the time that they're allowed: half an hour, 40 minutes at the very most, if that's okay with you fellows.

The Acting Chair (Mrs. Linda Jeffrey): Is that acceptable to you, Mr. Bisson?

Mr. Gilles Bisson: I've just been informed that Catharine Grant is prepared to give her time to NAN, so there are no problems with further presenters. I would just ask the committee to be respectful. First Nations don't work the same way that we do. I'm sure that they're not going to take two hours. The deputant who is coming after, Chief Arthur Moore, I'm sure has no problem giving up his time, if need be. I don't think he'll have to do that, and Catharine Grant has already suggested that. So I think we should be respectful that First Nations operate differently than us and that we not hold them to a time. I'm sure that they're going to be respectful of our pressing engagements afterwards.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, can I make a suggestion? If these are the three deputants who are left for the rest of the day, why don't we give 45 minutes? Do you think that's a significant period of time that you should be able to get—we'll get to 45 minutes and I'll give you the warning when you get to a minute close to it at that point and then we can discuss it further. Would that be helpful?

Mr. Gilles Bisson: Can we hear what Mr. Beardy has to say before we make any decisions?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, I have to deal with the business that's in front of me. I have to deal with your motion before I hear from Mr. Beardy.

Mr. Gilles Bisson: My motion is very simple: that we allow NAN the time that they need to make this presentation. I'm not being combative here; I'm not pulling any tricks. They're going to be within a time that's reasonable. We're not going to be here for a long, long time. I think it's just respectful, given that this legislation impacts them and they've been here for thousands of years. So let's not hold them to a time; they'll know what to do.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: I think we may end up discussing this for a long time. I think if we agree to the 45 minutes to start, we can revisit the issue after 45 minutes and everybody—

Mr. Gilles Bisson: We can revisit; I'm okay with that, as long as we're able to revisit.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Are you okay with that, Mr. Bisson?

Mr. Gilles Bisson: Mr. Moore had something.

Chief Arthur Moore: I'd like to have 15 minutes of time.

Mr. Gilles Bisson: You still have your time; you'll still have yours.

The Acting Chair (Mrs. Linda Jeffrey): Yes.

Mr. Gilles Bisson: All right: 45 minutes, and we can revisit after 45 minutes.

The Acting Chair (Mrs. Linda Jeffrey): Any further discussion? Ms. Mitchell.

Mrs. Carol Mitchell: Just very short: Do you want chairs?

Interjection.

Mrs. Carol Mitchell: No? You're good? Okay. Forty-five is good with me. I just want to make you comfortable if you want chairs. That's great.

The Acting Chair (Mrs. Linda Jeffrey): All those in favour of the motion?

Mr. Gilles Bisson: Just to be clear, it's 45 minutes, revisitable after 45.

The Acting Chair (Mrs. Linda Jeffrey): Any further discussion? All those—Mr. Dickson.

Mr. Joe Dickson: Certainly the 45 minutes is a given, and if they're going to review it at that time, I'd like to have a time frame that you would consider at that time. I know we have a flight to catch and everything else, but we want to hear everyone here. But I don't want it to go into tomorrow. So I understand what Mr. Bisson is doing, just kind of expanding the scenario, so I'd just like some direction from the Chair.

The Acting Chair (Mrs. Linda Jeffrey): I think we're just going to have to deal with what's on the floor right now. All I can deal with right now is what's on the floor. Any more discussion? All those in favour? All those opposed? That's carried.

You have the floor, Mr. Beardy. Please proceed.

Mr. Frank Beardy: Thank you. As I indicated, many of us travelled for many hours to be here, expended a lot of money. Even right now there are some of us who are staying in Wawa because of the lack of rooms within the town of Chapleau. We travelled from Wawa and some of us are going to travel back there again tonight.

I have been directed by the NAN leadership to appear before you and to reiterate NAN's position on Bill 191 and to again let the members of this committee know that we are not happy with how these hearings are being conducted. We are not happy at all.

To set up a hearing process that makes it extremely difficult, if not impossible, for people who will be directly impacted by the proposed legislation is not only disrespectful but goes totally against a fundamental belief of our democratic principles of this province and this country. Today is a very important day for the people of Nishnawbe Aski. Today is election day for Nishnawbe Aski: the day, every three years, when we select the Grand Chief and Deputy Grand Chiefs who will represent our 49 First Nations through the crown. The committee is here in Chapleau and expecting to hear from NAN First Nations on these two pieces of legislation, Bills 191 and 173. But as I said, it is election day, the single most important day on our political calendar—not just this year, but in the last three years—so why did you schedule this committee hearing today, of all days?

Some of us think it is just a mix-up by the clerk, but the majority think it's a deliberate message to us, the First Nations people who are directly affected by this legislation, signalling how little our concerns matter to the Ontario government. Either way, it was a huge mistake on your part, and one that has set the relationship back.

I am here as an envoy from NAN—because our elected leadership cannot be here; they're tied up in an election process as we speak—to speak because we have the opportunity to speak, but I'd be lying if I said I was happy to be here.

As it is with this committee's process, so it is with these pieces of legislation—a fiasco, an utter failure, an opportunity lost, a promise broken. I'll be making a few comments about that and what went wrong.

The plan from the start, as directed by the Premier, was that this would be a true partnership, a new relationship, creating a land-use planning law that would put First Nations in the driver's seat on a government-to-government basis. We keep repeating this context to you because it is fundamentally important. It is the key to everything that has gone wrong.

We started out on a government-to-government basis. That was something we could all get behind, something that showed respect for all the participants, a government-to-government relationship based on our elders' understanding of the treaty, that we agreed to live in peace, which we have; that we agreed, as First Nations people, to respect the laws of the Queen, and we have; and that we agreed, from time to time, to have shared arrangements with the newcomers. So far, up to this point, it has been a one-sided affair.

With that in mind, NAN has been at the table for two years working on a framework agreement that MNR claimed would guide the legislation. We didn't agree on the framework due to the lack of time, and when we saw the legislation, it was clearly not guided by the framework.

One simple example: We started out with land use planning being First-Nations-led. By the time we got to the legislation, that had been watered down to "significant involvement" for First Nations, as determined by the minister at her unilateral discretion. Bit by bit, over the last two years, the respect with which we began this journey has been hollowed out. The government-to-government relationship was first redefined by Ontario. It was qualified by legal denials, and finally, in the legislation, it was thrown on the trash heap.

The government-to-government relationship was a relationship that we based on our understanding of the treaty and the verbal promises that were made to our elders at that time. Ontario came back and said to us that the government-to-government relationship is based on their understanding of what is in the Indian Act, which means that we have power—and very little of that, even—within the reserve boundaries only. What did we get instead? The same old thing, the old relationship; not a partnership but a wardship.

In Bill 191, Ontario holds all the cards, makes all the important decisions, sets out all the rules and tries to placate First Nations with the illusion of participation and control. That is why Bill 191 has been rejected and why the Nishnawbe Aski Nation First Nations will exercise their jurisdiction and control over their lands as they have a right to do.

1400

Speaking of illusions, I also want to note for the record that the figure of \$30 million to support First Nation land-use planning which was mentioned by the government of Ontario some two budgets ago—the members more than once in these hearings have made statements with respect to that \$30 million, and those statements have been totally misleading. As you know or should know, the vast majority of that money—\$20 million of it—is being spent internally by MNR, on MNR projects run by MNR officials, with little or no participation by First Nations. The actual funding for First Nations land-use planning was about \$7 million, not \$30 million, much of which has already been spent, having perhaps \$2 million for this fiscal year and \$1 million per year for the next two fiscal years.

So where are we? We have a funding promise that on inspection reveals itself to be smoke and mirrors: \$30 million turns into \$3 million, maybe \$4 million. And we have legislation that is smoke and mirrors too. First Nation leadership ends up a shadow of its former self: vaguely defined participation opportunities in a rigged system. So it is no surprise that Bill 191 has been uniformly condemned by all sectors, for the same reason: It is all about the MNR. It gives all the discretion and decision-making powers to the minister and the bureau-

crats. As the Grand Chief has already said to you, we will not accept that. We are the north. It is our land, and we govern and protect by our inherent right given to us by the Creator. We have protected and governed the lands for thousands of years. The legacy of our care is that our use has been next to invisible. To you, the lands look untouched. They aren't. They've just been touched by the Anishnawbe in accordance with Anishnawbe laws and customs. That's why the lands are in the condition they are in. We will continue to protect and govern the lands for future generations.

There is a story that was conveyed to me by a number of elders in one of our meetings just about a month ago, a story that reflects on the care that we have given the land. They talked about the days when they used to move from area to area within their lands and camped, using spruce boughs for bedding. They said that as they were growing up, it was their task that was given to them by their grandmothers to gather up the spruce boughs after, when they were breaking camp, and make sure they were burned in one area, and that the land they had camped on for two or three weeks or two or three months would be taken back to its natural form. That was how they looked after the land. He said that now, today, Ontario is penalizing us because they're saying that that land is untouched by us.

We want to reiterate that we did not surrender our land by treaty or in any other way. We will exercise our treaty and aboriginal rights throughout our homelands, but we are willing to have shared arrangements with you. We want a partnership, a true partnership as envisioned by the Premier and by our nations as well, a partnership of respect and equality on a government-to-government basis. The land-use planning legislation got off track when MNR changed it from First-Nations-led to MNR-controlled. We need to return to our original purpose, First Nation leadership, and you need to listen to us and let us take the lead in showing the way forward in co-operation and respect. The government's imposition of its laws and policies, which negate and go against the spirit and intent of Treaties 9 and 5, must stop.

When your government and our Grand Chiefs signed a political accord in 2007, our chiefs and our elders had such high expectations that finally the day had come when we would be forming a relationship that would see us put a governance system together that would enable us to govern our lands together based on a mutual respect for one another. In the early part of 2009, we came to a sad realization that this was not to be. We came to see that your government was not there in good faith. It was made known to us that Ontario's definition, as I mentioned, of government-to-government was based on the Indian Act definition, that our authority would only be recognized within our reserve boundaries, and that Ontario came forward and said that our grandfathers gave up our homelands when they signed the treaty.

At the outset of these discussions we have always made it clear—very clear, right from the outset—that this is not our understanding of the treaty. As in the words of

a respected elder who has since passed away—he took me aside, and upon hearing the words that the written text of the treaty says that we gave up the land, with tears in his eyes, he said, “The Creator created what we see around us and gave us the sacred duty to look after it. How can we give up something that does not belong to us, but belongs to future generations?”

I must close with our usual warning that just because I have appeared here today does not mean that you have consulted with the Nishnawbe Aski Nation. This hearing is not consultation. We respect the individual members present here today, but our firm view is that this committee process is not legitimate. As we have said to the Premier, the process has been rushed, is insensitive to First Nations and is a violation of your legal duties to consult with us.

Thank you for your attention. My comments today have been offered in a spirit of respect and a real desire to use honest words and accurate language to tell the story of what has happened. The expectations of the Nishnawbe Aski Nation, your treaty partner and the government of what you call the far north, is that you will withdraw this legislation and begin a respectful dialogue without artificial timelines.

At this point I would like to ask any of the chiefs who are here with me and any of the members of the Nishnawbe Aski Nation to have their say to this committee.

The Acting Chair (Mrs. Linda Jeffrey): Can I ask, if they do decide to speak, that they say their name and spell it so that Hansard gets it right in the record, please? Thank you.

Chief Andrew Solomon: I'm Andrew Solomon from Fort Albany First Nation. When you look at how I got elected in my community, it was the citizens who elected me in my community. You heard your colleague talking about how we're different in how we conduct our business and how we conduct ourselves. When you look at that, when you look at the Premier and how he's elected, when you look at the Prime Minister and how he's elected, it just goes to show you that I have more power than those guys. I got elected by the people, just like you MPPs; you get elected by the people in your ridings. You're more powerful than those guys that you represent: the Premier and the Prime Minister.

1410

There's one point I wanted to make to you: Look at the way we look at our homelands. I said this at a meeting when they discussed possibly having a commission in Ontario.

It was stated earlier that we're nomadic people, and the treaty gave us something really different. A lot of people are displaced. The young people today don't know who they are. Their identity is lost. So you have a high rate of suicide. Those are the symptoms of the treaties and the policy-making of the governments.

There's another one here, a prime example: We're always saying we're willing to work with you. We're willing to share these resources. We are. When is the government going to wake up and say the same thing—both governments?

When you look at the legislation that's brought forward by the government, and the control mechanisms there, it's one-sided. Who makes the final decisions in the planning areas that have been brought forward in that legislation, Bill 191? Who decides on the amount of protection status there is?

The only reason why the Ontario government is coming to the First Nations is to make a case: the duty to consult and the duty to accommodate. Don't forget that consent. You require that. If we say we're not consenting to the legislation, well, you've broken your own laws. You get away with it; governments get away with it, time and time again. When First Nations do it, or when we demonstrate, our funding gets cut. Back in the 1980s, one chief of Fort Albany raised a flag—our First Nations flag—and put Canada's below it. They cut the funding for us, saying, "You can't do that." But Canada has been doing that forever, ever since the signing of the treaty, and the province followed.

The other thing that's very interesting, when I look at the history, is why we're here and the dilemma that we're facing: where you got your powers. Section 92: That's where you got your powers, in your Constitution, when Canada started, back in 1867.

But when it came to resource development, there was a milling case, the St. Catharines Milling case. The interesting and funny part is that Canada and the province settled it away from here. They went to Britain to settle it. That's why you're here today and that's where you get your powers. That's very interesting.

It just goes to show you, when you talk about jurisdiction, that there are only two ways you can have jurisdiction: You can inherit it—one way—or you get delegated it. The province and the feds got delegated by the Queen of England. First Nations here, we inherited it from our Creator. These are the things that you have to learn and to understand as MPPs or MPs.

I'm here also to tell you that I'm willing to work with you. Just give me a chance. I'm willing to share everything with you. I need your support in that.

These are all the comments I want to make today. I thank you for listening to me.

Chief Jonathon Solomon: Good afternoon, Madam Chair. Chief Jonathon Solomon, Kashechewan First Nation—and if I were to ask you where Kashechewan is, I think only one person would know.

I just wanted to share a little bit of history about our area. We live in the north. The land up north is our home. It's our lifeline, it's our bloodline of who we are.

The land up north is not an untouched land. Our people, my ancestors, travelled that land. All over the area of my land, you can see sacred burial grounds, where my people died, where they lost their loved ones during the winter months. So it's not an untouched land; it's not a land that has been discovered. We've been there for thousands and thousands of years. We were very nomadic people. We are still closely tied to the land. Like I said, that is our bloodline, our lifeline. Without land, we will be Cree people of James Bay.

I've always been the one chief who has questioned, who has always been very vocal since two years ago, when the province came forward with the Northern Table idea. The reason why is very simple: It's because I don't trust the province of Ontario. Look what it has done to us. They want to create a super-park on our land—225,000 square kilometres. We will not have a say. Under this process, the minister, the Premier have the aces in their hands. We become nobody.

I've got grandkids. I want a future for them. I want to teach them about the land that I grew up in, where my grandparents taught me. I don't want them to see a sign that says, "No hunting. Private property." That is not who we are. We are there, but if the province is willing and in good faith wants to work with us, they have to understand us. They have to recognize who we are.

I am a community of 1,600 people. I am in the mouth of James Bay in the Albany River. Right now, the province of Ontario is drooling over my river to develop for energy. That is my highway; the river is my highway. The river is my area of hunting.

1420

We are not against development. All we're saying is, we continue to live in poverty while the province gets wealthier and richer. Why do my people have to take shifts to sleep in a two-bedroom home where there are more than 15 people? Why is that? I'm an Ontarian, just like each and every one of you around this table. I'm also a Cree aboriginal and I'm a chief.

I've been disrespected by the province of Ontario. I signed a paper where we deliver Ontario Works programming in my community, and I have to sign on the dotted line that says that I'm a delivery agent. Why is that? The government of Ontario wants to talk about the government-to-government relationship. They must recognize me as a chief, not a delivery agent. That's the kind of respect that I want as a chief of my community. Respect is a two-way street, but the way things are going, we seem to be pushed aside. The traffic is coming from one way and we're just watching things happen as bystanders. We're saying, enough is enough.

Like I said, I am a very respectful person. I respect authority, but I also request that I be respected as a chief of my community and in my land. Where there are footprints all over the place in my territory, that signifies that my people were out in the land. That's what I want. Respect is a two-way street, and if the government of Ontario is willing to come forward to respect our inherent and treaty rights, I would welcome that with open arms. But at this point in time, I cannot and will not succumb to the pressures that we are put under. As Frank said, I'm here to make a statement, to tell you that I live up north. If you have an opportunity to see my area, I would welcome you.

Thank you very much. Meegwetch.

Chief David Babin: Chief David Babin from Wahgoshig First Nation. I've sat at the Northern Table in helping to develop a working relationship with the government on how we're going to proceed and focusing

on how our First Nations are going to foresee things. We do a lot of work at this level—the chiefs and the technical people we have working for us. It always comes down to the point where they just take what content they want to take out of there and develop it and leave us out in the dark on how they're going to proceed with it.

I feel that we've done a lot of work as First Nations in how we want to proceed with our territory and foresee how it's going to develop. Yet we are always pressured on how we're going to make decisions at the end of the day. We're getting tired of that, that you come to us and basically say, "You've only got so many days to come to these hearings" and whatever "to say your say," and yet you don't listen to us anyway.

Like the previous chiefs have said, we protect our lands. They've been protected for thousands of years. European people have come here, and look what they've developed; they've developed a land of disaster. They take all the revenues and whatever and leave, and leave us with nothing. Then we have to do the cleanup, and we have to live with that for 100 years. Our people are getting sick from all these industries that are coming around our territory.

In the far north, we're just starting to face that. I'm in the Timmins area, where development is very, very high. We've got the mining industry and the forest industry, where they leave a lot of pollutants behind. We worry about our water. We have some of the cleanest water in Canada, and we still have to worry about it because of the development that's happening around us. Yet you give these permits out to them like it was nothing.

You talk about business—you know, "Keep Ontario and Canada going." Well, what about the future? You're not thinking about the future; you're only thinking about what's happening today. We've got to think about tomorrow. We've got to think about our kids, our children who are coming. What are we going to leave them? Are they going to live on nothing? All we worry about is ourselves, today. We don't worry about tomorrow.

I was talking about development with the hydro dams and the damage they've done. They washed away our graveyards into the lakes, and yet development still happens.

You talk about species at risk. What's this all about? Species at risk? We went around and did a survey about species at risk and how our species are slowly disappearing, yet development still happens, so these species are at risk. They're still at risk, yet we don't do nothing about it. We just let it happen.

I don't know where the government lies on their priorities. Development, yes, but how much do we develop before we start realizing the damage we're doing to our society? You talk about the world in peril. We hear that here now.

I wonder about our kids. How are we going live in the next 20 or 30 years? How are we going to live? How are our children going to live? We want to try and provide a life for them too, not destroy it within 100 years. We have to start thinking about those things.

As the leader of my community—I have a very small community, but I still think about our kids who are coming up. Every day I look at those children. What are we going to offer those kids? Sure, mining's going up and forestry's going up. We educate them. What are we educating them for? Death? That's what I see.

We have to come to some sort of conclusion on how we're going to develop our territories. You talk about this park. Our rights are always being violated. You talk about parks; we want to protect some of that land too, but yet we can't develop our rights in those territories that you're putting these parks up on, you know? We can't even go hunting; we can't even go fishing. If we build a little cabin, we're all thrown in jail. For what? You took us off our land. You took us away from our home so you can develop industry.

The point is what? Destroying the lands, our rivers, our waters? What kind of water are we drinking today? It all has to be treated. You can't even find a decent cup of water in almost any lake in Ontario today because of development. You guys think you're safe behind the closed doors and drinking tap water? I don't think you guys are living in reality. You guys live in a make-up world. Our kids are going to suffer for it.

I want to see changes. You talk about this land being protected. Let's protect it and make sure that the aboriginal people have the rights to it. I don't think First Nations have ever destroyed any lands. I can't think of any. They've maintained it for hundreds and hundreds and hundreds of years. They got their food off of it for hundreds and hundreds of years. Yet the European people came over, got greedy and developed. That's all they thought about, themselves and how they're going to make a society work in Canada: over greed.

1430

You talk about the forest industry. Look at them: They're all falling apart because of greed, and yet First Nations are still there. They don't know what greed's all about: They were living in poverty for years and years. All we know is poverty.

Thank you.

Chief Keeter Corston: Chief Keeter Corston, Chapleau Cree First Nation.

I'm not going to be quite as polite. The Ontario government to me has never dealt in good faith, and I remember this Northern Table: I followed it quite closely. For once the First Nations thought that maybe there was some small chance that the government was going to be honourable and truthful, and that didn't happen, as usual.

When we're talking about the land, the people are connected to the land. First Nations people are stewards of the land; it's part of us. When you make the decisions in Queen's Park—as Chief Babin said, you polluted everything; you polluted all south of 50. You cut every tree; you've ruined it. Species are at risk, the moose population is going down, the marten population is crumbling, and still you want more. You want to go north of 50 now; you want to go north there because you've ruined it here: That's all.

I've warned the northern chiefs. I live south of the 50th parallel, and I've seen the behaviour. The behaviour hasn't changed one bit. These people are here to protect their homelands that belong to them. It doesn't belong to Ontario. The land was never surrendered. Stop with the lie: It's a lie. Start telling the truth and you'll be better people for it. Meegwetch.

Chief George Hunter: Good afternoon. My name is Chief George Hunter. I'm from the Weenusk First Nation. I'm way at the top of the province. I was one of the movers. I work with Nishnawbe Aski Nation.

The Acting Chair (Mrs. Linda Jeffrey): Excuse me; is it Hunter?

Chief George Hunter: It's Hunter.

I'm part of the independent First Nations that are part of the Nishnawbe Aski Nation. I was the mover to oppose the far north piece of legislation. What I think that the province has got to do is learn today that the government of Ontario does not have a relationship with First Nations. Our relationship with the government of Ontario stinks and it's very nonexistent. This piece of legislation, the far north piece of legislation, was developed not in concert with First Nations people, and obviously our relationship with each other doesn't exist. I want to point that out very clearly.

One of the other things that I want to state today is: The protection of our homelands—we're not talking provincial public lands here; we're talking First Nation lands. Get that right. The far north is First Nations land. Get that in your textbooks and your curriculum and teach your kids to learn that stuff.

The far north legislation is not endorsed by us, and I also want to state that it is very, very patronizing for Premier Dalton McGuinty to use our lands, protect our lands in the name of climate change. I'll tell you right now that our lands are not going to be responsible for turning the tides of pollution and climate change. Our lands should not be sacrificed to turn climate change. I want you to get this right: Our lands will not be the pieces of land that will turn climate change, so get that out of your head. Put that out of your head and get it out.

This land where I come from is very, very important. As a First Nation, we're probably the only First Nation in northern Ontario or in Ontario that doesn't run social assistance or welfare programs for our membership because the land looks after us. We have an abundance of fish, wildlife, waterfowl and stuff, and as a result, the land is our social welfare system, and we would like to keep it that way. We've got good, clean water and we can dip our cups into any of our river and creek systems without worrying.

One of the things that I am telling the provincial government today is that you have no business in writing pieces of legislation for the far north; this is First Nations land. If you look at the way the draft legislation is written now, it's so backwards. It's not going to complement our economic development rights; rather, it's going to control and extinguish our economic development rights to our lands and resources. A lot of people say it's our last

frontier. What the government instead should be doing is congratulating all of the First Nations and NAN territories for keeping the land in its natural state: the way it is. We have not contaminated and harmed our land. The politics and the accounting of genocide has got to stop. We've had people that have gone up, companies like De Beers and Platinex—I hear Platinex is going to be going up north again—those types of oppressor corporations that have interests in our land and resources have got to stop. We do not accept oppressor corporations to come into our territories because we have no benefit from it.

I come from the largest provincial park in northern Ontario. Since it was built in the early 1970s, we've only had one job. My father has been the radio operator for the Ministry of Natural Resources, and we get no income from our relationship with the province, so—

The Acting Chair (Mrs. Linda Jeffrey): Chief Hunter, can I just interrupt for one minute? You have one minute left of the 45 minutes we agreed to.

Chief George Hunter: Thank you. Following that note, I'm telling the government right now: After Moosonee, you've got no real property; you've got no pieces of real estate up there. If this goes through, all of the assets that you have in the north are going to go down. Thank you.

Mr. Gilles Bisson: Madam Chair?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: We had agreed to have a discussion about additional time. I think there are only two speakers left. One is Chief Moore from Constance Lake First Nation, who already has a spot for a deputation and it'd be his choice to do it now or later, and, I believe, Chief Randy Kapashesit, and is there anybody else?

Mr. Frank Beardy: Our elder—

Mr. Gilles Bisson: One of the elders?

Mr. Frank Beardy: Mr. Koostachin.

Mr. Gilles Bisson: Mr. Koostachin?

Mr. Frank Beardy: I want to invite him to say the closing comments.

Mr. Gilles Bisson: I would ask the committee just to allow them to have their say. It's not going to take that much time.

The Acting Chair (Mrs. Linda Jeffrey): Are you asking for a specific period of time?

Mr. Gilles Bisson: I think they've named three people. They've named Randy Kapashesit; Arthur Moore already has standing; and also Elder Koostachin. I think those are the only ones who are coming forward, so I don't think it's going to be a lot of time.

The Acting Chair (Mrs. Linda Jeffrey): Three deputations? Is that what you said? So there's a request on the floor for three deputations. Any discussion? Mr. Ouellette.

Mr. Jerry J. Ouellette: After the deputations, I would hope we would get a chance to speak as well.

Mr. Gilles Bisson: Oh, yeah. I think we should have a chance to ask questions for four to five minutes per caucus. That's going to wrap up the day, by the looks of

it, because we already know that Catharine has already ceded her spot. So I think we're actually going to be on time.

The Acting Chair (Mrs. Linda Jeffrey): Normally, it would be five minutes per deputation. So, at this point, you're looking at possibly five minutes per caucus.

Mr. Gilles Bisson: Per caucus. All right. That's fair.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion? The motion is that we allow three more deputations and then five minutes per caucus. Is there any discussion on that motion? Mr. Rinaldi.

Mr. Lou Rinaldi: Madam Chair, that's five minutes total, or for each deputation?

The Acting Chair (Mrs. Linda Jeffrey): I think Mr. Bisson is talking about five minutes per caucus.

1440

Mr. Gilles Bisson: For questions.

Mr. Lou Rinaldi: For all the presenters?

Mr. Gilles Bisson: That's right.

The Acting Chair (Mrs. Linda Jeffrey): Yes, for all of the presenters. So when we finish the three deputations, it's five minutes, five minutes, five minutes. Is there understanding about that?

Any further discussion? All those in favour? Carried.

The next deputation—go ahead—

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Just start speaking and they'll catch you.

Chief Randy Kapashesit: Okay. Thank you for your time. Good afternoon to each and every one of you, and certainly to the elders and the delegation from Nishnawbe Aski Nation, my fellow chiefs. My name is Chief Randy Kapashesit. I'm here in my capacity as chief for the MoCreebec Council of the Cree Nation.

I wanted to register a few comments in regard to the Far North Act. I also want to be certain that as you proceed with this particular piece of legislation, you are fully aware of the context in which I see this particular initiative.

I'm wondering how many of you here would admit to violating the human rights of any people, but in particular the human rights of indigenous people. I doubt that you would want that on your record, but that's in fact what I believe is going on here. I don't know if any of you are aware of the UN Declaration on the Rights of Indigenous Peoples, but I'd like to actually ask you to individually raise your hand if you've actually read that document.

Mr. Gilles Bisson: I've read part of it.

Chief Randy Kapashesit: The absence of hands going up only confirms my thinking. That is the most progressive document that has ever been produced in the history of mankind when it comes to understanding the voice of indigenous people the world over. But here we have a government in a modern time totally ignorant of that achievement by the majority of the world. The fact that Canada hasn't endorsed it only confirms that we continue to be committed to being ignorant, in my mind.

When you talk about trying to implement something like the Far North Act, you should recognize that there

are principles that have been enshrined in that document that the majority of the developed world actually agrees with, and I would encourage you to actually introduce yourself to that. You might be able to convince me that you're able to speak to me in a dialogue that I'm understanding, appreciating and wanting to see come forward from a government in a modern time.

There is something called free, prior and informed consent. That's been a big issue for indigenous people the world over. In the process and in the context of this particular initiative, I see no evidence that that has in fact been achieved or even attempted to be achieved. Again, I remind you that the human rights of indigenous people are being violated here as we sit before you. You can say that you're not really doing that, you can say that you don't really intend to do that, but your actions will speak louder than any thought or intention you may have.

The reality is, many of us are actually coming at this from a totally different perspective—it's like we're speaking two different languages—on the indigenous viewpoint on development and how we should be seeing the future. There is a great opportunity for you to actually lead the world and show that you understand that by becoming familiar with that piece of legislation, by indicating that you're willing to recognize that there are, in fact, human rights that are being violated here and you are concerned about that. It's a dialogue and principle that I'm sure you probably haven't even heard before this committee. I could be wrong; I hope I am, but my sense is that probably, nobody has represented these issues in that context to you.

In that document, it also refers to the fact that there are treaties, agreements and other constructive agreements that exist between the state and indigenous peoples. It says that we have the right to actually benefit from those particular obligations and that the state has a right to meet those particular communities insofar as they want to see a constructive interpretation in their favour of those historic documents, never mind the current ones that we have before us.

It also says that we have the right to a subsistence economy or a choice in an economic activity, whether it's on our own or participating in the mainstream economic initiatives that are out there. But the key point is, we have that right to choose. In the course of developing this document, the Far North Act, I've seen no initiative to actually be engaged with our communities, to say, "What is it that you're interested in?" I see this more as an imposition, a continuation of a higher power at work, if you will, telling us that this is the way it has to be. "Never mind your human rights, never mind your historical rights; we're not interested in that": That's what you're saying by producing this kind of document and expecting us to participate, meaning that you haven't actually spent any time to even develop an approach that achieves free, prior and informed consent. That is a principle, I think, that we will see going forward in any particular country, but in this country I don't see us actually leading anything in that regard. I throw that out to you as a chal-

lenge. If you want to have a meaningful dialogue with people like us, you need to educate yourselves on how our rights have been treated by the rest of the world and you need to come forward with that new understanding.

There are also other issues in there that I think you should become familiar with. I've mentioned a few of them. But I also need to say that the way this whole initiative has presented itself is so that we don't have a choice in the matter, that the powers that be that drive the economy and that put votes in various ridings throughout the country have determined that you must come forward with what you consider to be the best plan for those of us in the north, and you're giving us the impression that we have an opportunity to participate in that. That's a false starting point for me, because you're not coming to me with a respect for the human rights that we actually have. I think that's a really unfortunate circumstance, because I consider this time in the world the most progressive period for the indigenous people the world over and I see nothing coming from this particular bill that actually reflects that. I think that's the challenge that's there before you. You need to recognize that some of us expect more of the government, not because of historical positions or issues that are actually relating to treaties and agreements that are really in many ways not fully implemented and respected unto themselves, but even in the context of what the rest of the modern world thinks: We are being ignored by Canada. Canada isn't the only one. Canada's also got company with the United States, New Zealand and Australia, but Australia has turned their position on that recently. But the majority of the world that votes at the UN endorses that document, except for those countries, and you have to ask yourself why. In the context of this dialogue, I don't think that's lost on any of us.

There would at no time be any expectation that we would be having what is called, for lack of a better word, a far south act, but that is in fact what I think is being proposed here: that some people know better than others, and it's being proposed as such. If in fact it were that way, if we were that arrogant, we might propose that for the south, but we're not that way. I do think that it's incumbent upon you to learn more about the rights of indigenous people. I'll stop there because I think that my time is up. Thank you.

Mr. Gregory Koostachin: Good afternoon, everyone. My name is Gregory Koostachin. I am one of the elders amongst many others as I represent the east Mushkegowuk territory. I have been with the Nishnawbe Aski chiefs, and I go anywhere every time they call me to attend their meetings. I was in Toronto, the first time in my life that I have entered Queen's Park, the Parliament building. That was Mr. Bisson's office in Toronto. I never had this in mind before, to get in there. When I get in there, it reminds me of everything that the elders had said in the past. It reminds me of when the first white people came and discovered this land. It reminds me of everything.

1450

I'm not going to take very much of your time to repeat all this. I just wanted to say that the elders here, the

Nishnawbe Aski, some of them are there behind me, and the many other elders—our job is to give advice to our chiefs, to remember not to give their land anymore to anyone, to try to keep their land, what is left out there, for us people. There's not very much left; you all know that. I come from where there are diamonds next door to me and we are unable to get at them. We don't get anything out of it and I'm very happy to bring this up so that the other chiefs, the other people, they will know what's happening to us. The revenues have been taken away from us. The diamonds or anything which is important has been taken away from us, and we don't get anything in our community. You know what it's costing by that? The provincial government is issuing permits without any consultation with us. And this is why we give advice to our chiefs that enough is enough. We will hold what is left out there and then we will fight for it.

I just want to come to the point that our land is not for sale. It is not for sale. We want to keep that. We want to encourage our chiefs to hold it as much as possible. If it doesn't work, I guess both federal and provincial governments will push us to go overseas to London, to go out there to have a meeting with the Queen. And even then, if we are defeated by our government, both provincial and federal, we are willing to bring this to the Supreme Court, because everything is taken away from us. I had this speech in front of the chiefs this morning. Right now, the election is on, who is going to be a new leader for our Nishnawbe Aski territory.

I appreciate your respect, because you called us at a bad time. I appreciate your speakers because you came here with, I feel, a little bit of shame that you would bring this here to us while the chiefs are doing an election outside here, on the reserve. I thank you for your respect. This should not happen. You should just leave us and give us time to have our new leader for our Nishnawbe Aski territory, before you call us here.

I wish I had more time to speak. I thank you all, anyway, for everything.

I thank my chiefs and all the others for allowing me to come sit here before you. I appreciate it very much. As an elder, I speak with them directly about what to do. This is from their mouths too, what I'm saying; these are their words, what I'm saying, because I talk to them and I learn lots from them.

Thank you very much again.

Mr. Frank Beardy: I'd like to thank all the speakers who joined me here. I would like to reiterate that our presence here, and our presentation, should not be construed as the government of Ontario meeting their legal obligation to consult with the First Nations. I would also like to stress that in the past two years, in our discussions with the government of Ontario, we have always stressed that we come to you in a spirit of good faith.

We come to you with the knowledge that our First Nations signed a treaty with the government of Canada, to which Ontario is also a signatory. We know, through the archival research that our people did, that the treaty that was brought to our people was not a negotiated

treaty between two nations. It was negotiated, all right: It was negotiated between the government of Canada and the government of Ontario. Between the two of them, they dictated the terms and conditions of that treaty. When they assigned their commissioners to come into our territories, the commissioners were given specific instruction that they were not to change the wording of the written text of the treaty.

I would also like to remind the people here, the committee members, that our people did not know or understand, nor did they know how to speak, the English language, and that we used the missionaries and Hudson's Bay managers, who barely spoke the language, to translate that legal document that was given to our people.

We also know that they were given instruction that they could not change the written text, but they could make verbal promises. There were many verbal promises that were given to our people. It is those verbal promises that we hold sacred, and it is those verbal promises that one day we expect to implement in our territories.

Meegwetch, and I thank you for your time.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Committee, as agreed, we have five minutes per party to ask questions, beginning with—

Mr. Gilles Bisson: There was Arthur Moore from Constance Lake. He was the only one.

The Acting Chair (Mrs. Linda Jeffrey): I understand that, but as I understood it, he was going to be a separate delegation—

Mr. Gilles Bisson: Okay, if you want to do him separately.

The Acting Chair (Mrs. Linda Jeffrey): So he would have his own 15 minutes and his own five minutes of questions afterwards.

Mr. Gilles Bisson: That's fine with me. Yes, he's fine. Okay.

The Acting Chair (Mrs. Linda Jeffrey): I think that's what I understood, so unless I hear something different from committee, we're going to deal with this delegation in its entirety. So, five minutes for the government side—is anybody asking any questions? Mr. Brown?

Mr. Gilles Bisson: Can I just have point of order, to assist my good friend Madame Mitchell?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, sorry.

Mr. Gilles Bisson: On a point of order: I just want to be helpful to the government here. For people who are here today, to know how the committee ended up here—you shouldn't be blaming the government, and I'm going to fess up to it, because quite frankly, it was a decision of the subcommittee, which I'm part of. We had decided that, because the committee was not travelling to the far north, we needed some way to talk to NAN. The idea was put forward by Ms. Mitchell. At the time, I thought it was a good idea, and if there's any blame to go around, I share in that. So on behalf of the committee I want to apologize if this is during your elections. It was an oversight, certainly on my part and, I'm sure, by the rest of

the committee. It wasn't meant to hurt anybody. But out of this, I think the committee has learned something, and if we erred, we might have learned something through that error, so I want to take responsibility for that.

The Acting Chair (Mrs. Linda Jeffrey): Thank you.

Beginning with the government side, Ms. Mitchell.

Mrs. Carol Mitchell: I just—

The Acting Chair (Mrs. Linda Jeffrey): Is this your five minutes? Can I just understand—is this the five minutes or a response to what he's saying?

1500

Mrs. Carol Mitchell: It's a response to what he's saying.

The Acting Chair (Mrs. Linda Jeffrey): Okay.

Mrs. Carol Mitchell: I wanted to make a statement as well. I appreciate that the member has brought those comments forward, but when the subcommittee met it was in good faith that the day was selected. Certainly, what came forward to the subcommittee—which I am a member of, representing the government—was that this was in consultation with First Nations. We agreed on this day because this was the day that was recommended to us from the subcommittee members. So in any way that this day reflects back on the government, I really want to make that statement—in good faith and very respectful of NAN, but that was the information that the decision was made upon by us.

Mr. Gilles Bisson: And I've already taken responsibility, so the government's off the hook.

The Acting Chair (Mrs. Linda Jeffrey): Okay, we're not going to have any more debate about that. We're going to get to the five minutes. Mr. Ouellette, do you have any further comment on Mr. Bisson's statement?

Mr. Jerry J. Ouellette: Seeing as we're all commenting, I will mention this now, but I see things in a different—I see the Creator as giving opportunity everywhere, and when else in the short time frame that we had to deal with would we be able to get everyone together? This is an opportunity for the committee to have as many as possible together in one location in the time frames we had. So I look at it as an opportunity that we should capitalize on so that we have good debate and understanding.

The Acting Chair (Mrs. Linda Jeffrey): Okay. The first is the government side.

Mr. Frank Beardy: Can I respond to that?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Beardy, no. What I'm going to let you do is that if you want to respond during the questions, you can, but otherwise I can't stay on schedule. I have to get members out into a plane later this afternoon, so I have to follow my schedule.

Government side, Mr. Brown.

Mr. Michael A. Brown: Thank you. I'll let Mr. Beardy say what he was about to say as the first part of my five minutes.

Mr. Frank Beardy: I was just going to say that we have an understanding that we were putting together that, for the government to meet their legal obligation to consult with our people, they have to consult with our

individual communities in the north. That is a position that we've come forward with, and we expect that consultation to take place with our individual communities.

Mr. Michael A. Brown: Thank you, Mr. Beardy. That was going to be one of my questions. Our understanding from when you appeared in front of us in Toronto and the grand chief appeared was that that was one of the basic principles that you were enunciating, that the consultations need to take place with individual First Nations within NAN. So I appreciate that clarification.

You know that, on Bill 191, this is an unusual thing for the committee of the Legislature to do. It is not unique, but it does not happen very often that we come out after first reading to discuss a bill with the people of the province. This is the approach that the government has taken on this bill. We could expect that there would be some amendments to the bill that's now before you—I'm speaking of Bill 191—and then we would debate it on second reading in the Legislature, and then there would be a further legislative committee process that would require the approval of the other two political parties, so that we would have a further opportunity to come out and speak with NAN and others about Bill 191.

My question is, could you, and would the organization—I guess the First Nations of NAN—be willing to provide us with some advice on how a legislative committee, after second reading, might want to proceed in a way that would be respectful of your First Nations and cognizant of the fact that there are only 107 members of the Legislature available to go out on committee?

Mr. Frank Beardy: I want to respond in a very clear, concise manner. A few years ago, when we started to look at working with Ontario and being involved in pieces of legislation that affect our people, one of the first pieces of legislation that we were involved in was what they called the parks act, when waterway parks and parks were imposed upon our territory. There was an imposition by Ontario. We said that we would like to work with Ontario to try to find a way for us to live with these parks. So the leadership instructed the grand chief to look at ways and means in which to address the concerns and issues that the Nishnawbe Aski communities and First Nations had with respect to the parks act. There was a lot of work done by our people, and we pointed out some 50-odd changes that we would like to see. The grand chief even went in front of the parliamentary committee to address those changes and concerns. When it came back to us, we saw that there had only been one change made, and even then it was watered down to a point where it didn't even reflect on what we wanted to see. We still hadn't lost faith. We were still committed to try to work things out with Ontario.

When the revisions of the Mining Act came about, we again said, "We want to participate and be a part of the changes that we would like to see within the Mining Act." We went in the tent, so to speak, with the government officials to work on the changes that we would like to see that reflect on the concerns and issues of our people. Every time we came to a clause that we would

like to see enacted as law, we were told, "We will deal with that at the policy level." We did not enter into these discussions to influence policy. We went into these discussions to influence what the wording of the law should be.

A few months after that, we went in the tent to deal with the land use planning act. Again, the same thing happened.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Beardy. I have another question on this side.

Mr. Ouellette, you have the floor.

Mr. Jerry J. Ouellette: We have five minutes, Chair?

The Acting Chair (Mrs. Linda Jeffrey): You have five minutes.

Mr. Jerry J. Ouellette: I very much appreciate the presentation.

I've been to Fort Severn in February, I've been to Peawanuck, I've been to Moosonee, I've been to Dryden and Pickle Lake and Kenora, I've participated in drumming circles, I've been to Pagwa, and quite frankly, I know nothing of the north. It was mentioned earlier on that the people living in the south live in a fantasy; it's very difficult for the people in the south to understand what takes place in the north. In the same fashion, the people in the north don't understand what happens in the south.

In Queen's Park, my colleagues have heard me say on a number of occasions that I try to make decisions on a very simple premise, which is to look to the future through the eyes of the children of today. What I hear today from the First Nations community is a step beyond that: It's looking to the future through the eyes of the children of tomorrow to ensure that that lifeblood is there for so many.

I would ask those in attendance today to see Donna or Dave or Chief Beardy. Chief Beardy came to my community to thank me for the work that I'm trying to do with the communities in the north, and the only reason I mention that is to bring some understanding that some of us are trying to reach out to do what we can.

I agree that the difficulties in the legislation coming forward and understanding how it's going to impact—and from our perspective, yes, I have concerns, and I want to hear your concerns. I appreciate the opportunity to be here today when all are together, so that we can expand this to make sure that there are consultations with each and every First Nations community.

In southern Ontario, so many times we see how the media talk about all the other countries around the world that need to be saved and what needs to be done, yet we hear about communities in the north that have to share bedrooms with 15 living in a two-bedroom house, and they don't have an understanding at all. So many times I try to bring that perspective to the south but many times they don't listen.

1510

The influence of southern Ontario is so much. I sit around and I see individuals in the First Nations community using their BlackBerries and cellphones, and

whether it's West Nile disease or whether it's H1N1, the influence is coming. A wise man said to me—it was Chief Stan Beardy—that there are three ways we can solve this. It's quite simple and it's quite explicit. I was quite surprised; it's quite realistic. We can either kill all the white guys, kill all the Indians, or we can sit down and talk. How much time is it going to take, do you feel, in order to talk? We realize that we need to talk to gain an understanding. We fly in on planes and land at the airport and come by air conditioned buses to here and think we have a view of the north, but we really don't understand. We need that time. How much time do you believe we will need to gain that understanding so that the caretakers of the Creator's land can continue to take care of those lands? How much time will we need? What's it going to take? Where's the talk going to start?

Mr. Frank Beardy: Well, we're up against something so big, so huge; you know? We're up against John Wayne.

Mr. Gilles Bisson: He was a bad guy last time I checked.

Mr. Frank Beardy: What has been portrayed by western society of the indigenous people of this country through every media source is what we're up against. We have to change the thinking of society as to who we really are, and that starts with you and your children and your grandchildren. That's where it starts. If you're committed to that, it's going to take the next four, five, seven generations before we can change that thinking around and develop that respect amongst our people of who we really are.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson, you have five minutes.

Mr. Gilles Bisson: First of all, I want to thank you for doing what you did. I wasn't too sure what you were going to do. I did know there was going to be a presentation from NAN, but if there was a presentation to be had, I think this was the one that probably has the most effect on this committee. I think it gives—at least for me and I would imagine for my colleagues on the government side—a better insight into the difficulties about how this process is flawed and has to restart. The basic premise is a fairly simple one, in my view: These are traditional lands that you've occupied for thousands of years, and if you're not in the driver's seat, then maybe we shouldn't be driving this car at all. Maybe we should take it back to the garage and fix it and find another way to do things.

The other thing I picked up on—it was said by someone and I forget who it is, but just for committee members to understand—is that there's a real fear and a real sense by community members, and not just people here and chiefs, that the treaties that were signed, both Treaty 3 and Treaty 9, were signed in good faith but sometimes with little understanding, and they don't want to repeat that mistake again. Not that they think that the treaty was a mistake overall, but it has not served your people well.

When Chief Jonathon Solomon talks about people sleeping in shifts, he's not joking. People in our com-

munities sleep in shifts because there are not enough beds and not enough places for them to sleep, and most people don't know that.

I would just say to committee members here, the one thing that I've learned over the years representing James Bay—and listen, I take fault because I grew up in Timmins and, like most other French-Canadian kids or other kids that are non-aboriginal, knew very little of my neighbours who lived on this land all of this life. They're infinitely wise and patient people and infinitely very peaceable people. We're extremely lucky that we're dealing with the Cree and we're not dealing with another group of people from some other land who may look at this in a much more—how would you say?—militant way. I think the call that they're trying to give this committee and this government today is, they're prepared to share the land. There's no question that they want development, but they want to make sure that they have a say in the process, that they're able to drive it, that they're able to benefit from it.

For the mistake of sending the committee here in Chapleau, I just want to again say to my government friends, we made a decision—and I was part of that decision and I accept my responsibility under that. But I want to say to my friends within the various communities of NAN, it was not done in order to be an affront; we just didn't think of it. Sometimes smart people do dumb things. I consider myself a pretty smart person and that was a pretty dumb thing. So I just say to all of you, it's an apology on the part of myself and everybody else here. We didn't clue into it. In the end, it is an affront, but I think a committee walks away from this with a bit of a better understanding of what the issues are.

I guess I'm going to end on a comment—and there's a question at the end—and it is, what really is galling for me about all of this is, this is a really simple issue. First Nations are asking that they be given the right, which they believe they already have, of consent about what happens in their territory. If the province of Ontario is going to have any kind of a project that happens anywhere in Ontario, be it a shopping mall, be it a new Ford plant, a mine, a forestry operation, building your own private house, the province must give consent. If the city of Timmins decides that there's going to be a mine, the mining company comes and knocks at the door in the city of Timmins and says, "Oh, we would like to open up a mine in the middle of the city of Timmins"—as we have now with Goldcorp, where they want to be able to mine the open pit in the centre of the city of Timmins—the city of Timmins has to give consent. So what is so wrong with giving First Nations the same right of consent that we already have?

I don't understand why the Legislature and the government don't understand that, because it is already the practice. And as you know, coming from municipal politics, citizens in a municipality have the right, by way of the Ontario Municipal Act, to decide how things will be developed in their communities, what kinds of developments are acceptable, how those developments

are to go forward, and what the benefits are for them, in the end, by way of other taxation measures they already have under the Municipal Act and under various acts of the Ministry of Finance. So I ask you this question, Frank, and it's a pretty simple one: Why is it that we're not getting it, that everybody else has consent and you don't? What does that mean?

Mr. Frank Beardy: Why is it that we don't have the right to give consent?

Mr. Gilles Bisson: Yes, why won't we give you consent? What do you think we're doing here? You seem to have done a pretty good job for 6,000 or 10,000 years.

Mr. Frank Beardy: Again, there, it's a mindset of a conquering nation that came into our territories. Conquered what? We weren't conquered through war. We have treaties that we call "friendship" treaties that we entered into, and yet the government that came in says that the land is empty and that it is theirs to take. It's a mindset, and it's the mindset that is wrong. That mindset tries to subjugate people. It's active in the way that government relates to us, and, as one of the chiefs said, enough is enough.

We entered into this dialogue to create an environment that would stabilize investment in the region, that would make people comfortable to come to invest their money and projects in our territories. Yet the way the government is going about it, it's not going to stabilize, it's not going to create an environment where investors will want to invest their money; it's going to further invigorate us to take over what is our right to the land. If it means that we have to break those laws that are imposed upon us and if it means that we will go to jail for that, then so be it.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Beardy, I'm sorry, but the time has expired. I want to thank you, your elders and your chiefs for coming out today.

1520

Mr. Frank Beardy: Can I make just one short statement?

The Acting Chair (Mrs. Linda Jeffrey): Sure.

Mr. Frank Beardy: We know that the Premier is focusing on December 2009 to get on the world stage in Copenhagen to announce to the world how he's going to save the world by using our lands. I just want to tell the committee that we are going to be in Copenhagen, and it's going to be up to the government of Ontario and the Premier how we position ourselves at that international conference: whether we support that vision, that dream, or whether we tell the world the true picture of what's happening. Meegwetch.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today.

MATAWA FIRST NATIONS

The Acting Chair (Mrs. Linda Jeffrey): Our last delegation of the day is Matawa First Nations. Chief Arthur Moore, you have the floor. You have 15 minutes. I will give you a one-minute warning if you get close, and

then there'll be five minutes afterwards for questions shared amongst all three parties.

Chief Arthur Moore: Thank you.

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Just a minute. Mr. Bisson.

Mr. Gilles Bisson: Just a quick point of order for committee members to know: The elections, as I understand, have re-elected Stan Beardy as Grand Chief of NAN, for those who don't know.

The Acting Chair (Mrs. Linda Jeffrey): Great. Thank you for that update.

Chief Moore, you have the floor. If you could state your name and your organization. When you begin, you'll have 15 minutes.

Chief Arthur Moore: Thank you. Good afternoon, committee members. Thank you for allowing me to appear today, as well as the NAN delegation. My name is Chief Arthur Moore. I am the chief of Constance Lake First Nation, a community 250 kilometres north of here. I have also been appointed to speak on behalf of the Matawa First Nations Tribal Council, a group of nine First Nations in northern Ontario. These include Aroland First Nation, Constance Lake First Nation, Eabametoong First Nation, Ginoogaming First Nation, Long Lake No. 58 First Nation, Marten Falls First Nation, Neskantaga First Nation, Nibinamik First Nation and Webequie First Nation.

Five of the communities are road accessible and five are remote, fly-in communities in the far north. Our total population is approximately 8,400 people. Our people are employed in a number of areas: some within the resources sector, such as forestry, mineral exploration etc., and others follow a traditional way of life hunting, trapping and living off the land. By way of example, my own community, Constance Lake First Nation, has an agreement with PhosCan for advanced exploration in our traditional territory and we are working on an impact benefits agreement—

The Acting Chair (Mrs. Linda Jeffrey): Chief Moore, can I interrupt you for just one second? Could I ask the people standing at the back of the room, if you're going to have a conversation, to step outside because it's hard to hear the chief? Thank you.

Interjection.

The Acting Chair (Mrs. Linda Jeffrey): Yes. I just want to make sure we can hear you.

Chief Arthur Moore: —if there is to be a future mine.

I will begin with Bill 173, the Mining Act amendments, and follow with comments on the Far North Act, Bill 191.

However, before I begin, I would like to say how disappointed I was that none of these hearings were held in a First Nation or in the far north. To get a real sense of the far north, you have to meet the people and come to the communities. While the four hearing sites are relatively central, they do not give a sense of the far north, and equally central sites could have been found in the far

north. Moreover, it is disrespectful to plan meetings which will affect people's lives away from where people live. Would the Oak Ridges Moraine Protection Act be passed without hearings in the greater Toronto area?

The Mining Act amendments, Bill 173: Matawa First Nations, including chiefs, counsellors and community members, participated in several Mining Amendment Act forums. They were very clear in what kinds of changes they would like to see in the legislation. Two summary reports were sent to Ontario. Regrettably, most of those recommendations were not included in the new Mining Act amendments. This is not a question of consultation but rather, were our people listened to? Consultation is only as good as the accommodation that arises.

The main points of my presentation are based on the Matawa community consultations, which are provided as appendices. These include, but are not limited to:

(1) Notice: The act does not provide any notice prior to staking in First Nation traditional territory. It only happens afterwards. We have always said that there must be consultation in all stages of the mineral exploration cycle, not after the fact. Notice is important for health and safety reasons as well as establishing an early relationship with prospectors and junior mining companies. A training course for prospectors to learn more about First Nations is very helpful but not the same as notification.

(2) Consent: The act provides no written consent of First Nations prior to staking, early exploration, advanced exploration and active mine development. There are proposed processes calling for plans and permits, but that is only with the ministry. These processes are expensive, time-consuming and bureaucratic. While regulations will be drawn up which talk about First Nation consultation, this actually gives more control to the Ministry of Northern Development, Mines and Forestry. It does not provide for First Nation consent. Most First Nations want mineral exploration in their territory; they just want it done in a co-operative manner. "Consent" does not mean veto power, but if First Nations are involved from the beginning with Ontario and the companies, it will mitigate difficulties before they arise.

During our community consultations, First Nations said they wanted consent at all stages of the mineral cycle. Consent is also part of co-management, which is what was envisioned in the treaties—shared resources and responsibilities. The legislation does not adhere to the United Nations Declaration on the Rights of Indigenous Peoples for free, prior and informed consent.

(3) Impact benefit agreements: There is no reference to mandatory IBAs in the legislation. This is totally voluntary on the part of the resource company. The act must include negotiations for mandatory impact benefit agreements with resource companies. This sends a clear statement to both First Nations and industry that this is about partnership and that First Nations are contributing to this process. Mandatory IBAs in the legislation for new mines will spur development in First Nation traditional territory and get First Nation support. It leaves

no uncertainty and tells companies that First Nations have to be part of the process as partners. The proposed act only refers to administrative arrangements which are very ambiguous; you don't know if those arrangements are with governments or companies.

(4) Resource revenue sharing: No reference to resource revenue sharing is found in the legislation. Like the need for IBAs with the companies, there is an equal need for resource revenue sharing with the provincial government. This is part of the government-to-government relationship between First Nations and the province. The province collects many revenues—royalties, taxes, fees, levies etc.—on all components of the mineral cycle. First Nations do not receive any of this, even though they can be the most socially and physically impacted by development. A case in point is the recent diamond royalty at the Victor diamond mine. Moreover, municipalities in a development area can receive certain financial benefits from the province but First Nations cannot. If resource revenue sharing is handled by the province, then it is an incentive for companies to negotiate with First Nations on matters and invest in these areas.

1530

(5) Capacity building: There is no reference to capacity-building funding to First Nations during the mineral cycle process. For First Nations to take advantage and actually benefit from mineral exploration and any potential mine, capacity building is a necessity. Capacity building helps the First Nations prepare for any mineral development and will assist companies in working with First Nations. If there is no one at the First Nation level who knows what is going on in the mineral cycle, the community will be resistant to any development, and mineral companies will sense that hesitancy. This adds costs and time to any negotiation processes.

Furthermore, capacity building is needed for the broader community in terms of a concerted employment and training strategy. Usually this happens after the fact, and First Nations are not prepared for the jobs, due to the higher skill levels required. Capacity building must start in the early stages of mineral development, preparing First Nations for the skilled jobs required.

(6) Environmental monitoring, and restoration for exploration: There are no environmental benchmarks and commitments in the legislation to restoration of mineral sites to their previous conditions. This requires independent monitoring. While there is a commitment for regulations on activities described in an exploration plan or permit, it is not specific enough and the option for monitors is very discretionary.

The environmental benchmarks must be clear in legislation, to give comfort to First Nations who see all the exploration going on around them with no environmental regulation or monitoring.

While existing environmental assessments can be very expensive and time-consuming, a joint First Nation-provincial assessment process could be more appropriate. However, the environmental commitment must be stronger in the legislation.

(7) Compensation for stock transfer, and successor agreement: There is no reference in the legislation to First Nations agreements when companies sell their interest or stake in the land. As an example, a company which has a good relationship with a First Nation can sell their rights to a claim and make a very good profit. However, First Nations will see none of that, even if they have contributed time, money and trust. Then they have to start all over again with the new company, which might not even hold the same corporate values as the previous company, and that's very significant.

The legislation needs to include a commitment that First Nations agreements must be transferable and compensated.

(8) Tax credits upfront for consultation: No commitment to upfront tax credits for companies to engage in consultation with First Nations in early exploration is found in the legislation. This is when consultation with First Nations is the most important. Junior mining companies do not have a lot of available funds for upfront consultation costs. Although the federal government has the major role in taxation, the province, in legislation, could include upfront tax credits for early exploration. This will make it worthwhile for companies to consult with First Nations.

(9) Socio-economic studies before mining: It is very important that there be socio-economic studies before any mine becomes active. This will help First Nations prepare for the changes which come with development.

When a community goes from 80% unemployment to 80% employment in a very short time, there are issues that need to be addressed. Or, if a community stays at 80% unemployment and there is an operating mine close by, there could be problems as well, such as union rules or qualifications. Yet the legislation does give the minister great discretionary power to override regulations if it is in the socio-economic interests of Ontario, even at the expense of First Nations.

The Acting Chair (Mrs. Linda Jeffrey): Chief Moore, you're approaching the one-minute mark, just so you know, if you want to do some wrap-up.

Chief Arthur Moore: Yes, I have four more pages. If you would allow me, I would appreciate that.

The Acting Chair (Mrs. Linda Jeffrey): Chief Moore, we have not agreed to that, and right now, you have one minute and three seconds to wrap up.

Chief Arthur Moore: Okay. The Far North Act—

The Acting Chair (Mrs. Linda Jeffrey): And we can take a copy of your deputation.

Chief Arthur Moore: Okay.

The Far North Act: When Premier McGuinty announced changes to the Mining Act in July 2008, he announced that a Far North Act would be coming as well, but he also set a goal to protect one half of the boreal forest, 225,000 square kilometres. In neither of these instances did he consult with First Nations. It was a surprise to our communities, and not a welcome one at that, for several reasons.

Ontario Parks: A number of First Nations have had negative experiences, as my colleagues indicated, with

Ontario Parks. Ontario provincial parks, water parks and other protected zones have hindered the development of First Nations, as mineral and hydro development is prohibited in these areas. Hydro development is also banned on northern rivers, which our First Nations feel limits any potential revenue generation to them at a future date.

Most of the northern parks do not have management plans, high public usage or the financial resources to make them viable. We were not consulted when these parks were created. In fact, I presented, on behalf of the Matawa chiefs, at similar hearings against the Ontario parks and protected areas act in 2005.

The Acting Chair (Mrs. Linda Jeffrey): Chief Moore, I'm sorry, your time has expired. I'm going to go—

Chief Arthur Moore: Okay. What we'll do is submit the rest.

The Acting Chair (Mrs. Linda Jeffrey): Yes, absolutely. You can give it to the clerk, or send it to the clerk, and we will make sure all the members get a copy of it. We're going to go to questions now.

Mrs. Carol Mitchell: We have a copy.

The Acting Chair (Mrs. Linda Jeffrey): Oh, we have a copy. Okay. Yes, we do. I got mine moved.

We're going to go to questions, beginning with Mr. Ouellette. You have one minute 30. I'm going to keep us to schedule.

Mr. Jerry J. Ouellette: Thank you, Chair.

The Acting Chair (Mrs. Linda Jeffrey): We've got to catch a plane.

Mr. Jerry J. Ouellette: Thank you very much for your presentation. One of the questions that came forward was the consultation process. The mining industry was concerned that the onus was being downloaded upon them to enter into consultations.

I would hope most of the members know why it was stated by Frank Beardy twice that this was not a consultation, because there are legal implications of the consultation process within the First Nations community.

How do you see that playing out, if it's the mining companies that are doing the consultations? Or should the onus be on the government to be responsible for the consultations?

Chief Arthur Moore: It depends on the relationship with the different companies. Some are socially obligated to communicate with First Nations leadership, and membership as well. In our community, we communicate through general meetings or monthly meetings or special meetings, to discuss specific concerns that we have.

The other thing is that we make sure that the consultation framework is in place. We do communicate with certain ministries, the officials, and companies, to discuss the exploration processes and benefit impact agreements.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Thank you for that. Actually, you had quite a good presentation, because you were pretty specific about a number of areas that you see as shortfalls in the bill. One struck me, and that was the environmental monitoring—no, hang on. Yes, it was the en-

vironmental monitoring. In it, you're saying there's nothing in the legislation to deal with the issue of cleanup and rehabilitating the site. But the current act actually has that. Under the Mining Act, you have to have a mine closure plan. It sets out, by way of fairly strict guidelines, that once the mine starts up, they have to set aside funds, and when the mine shuts down, there needs to be a cleanup. So was there something beyond that that you're asking for?

Chief Arthur Moore: Yes. I guess we're basing that on experience. For example, in the Pagwa site, there hasn't been any cleanup on PCBs and all that. We've been requesting different ministries to do that and we haven't had any response.

Mr. Gilles Bisson: We should have a chat afterwards, because I think it's on the list to be cleaned up.

Chief Arthur Moore: Okay. So I guess the problem is, there's no dialogue. We need that communication, we need that dialogue with the leadership and the ministry officials or the companies that are involved. That's lacking and that needs to be included.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. One of the things we very much appreciate is the way that you've been very clear in the points as you go forward, because it gives us really something concrete to discuss as the amendments to the legislation perhaps get drafted or at least are considered. You've been very clear

about the issues as they affect your group of First Nations and we appreciate that very much.

Most, if not all, of these can be accommodated as we go forward with the drafting of the regulations, because as you know for the Mining Act, it is more an enabling act than a precise act saying you've got to do this, this and this. The government contemplates an ongoing relationship with First Nations as we go forward in the drafting of regulations. I know my friend across the way is going to say, "Well, it all should be in legislation." But as we also know, legislation is difficult to change, and in a world where changes seem to be the order of the day more than they're not, it gives some flexibility to accommodate the circumstance that may arise. So I just want to assure you from the government side that we hope to engage your First Nation and the First Nations you represent as we go forward with both acts.

For 191—you didn't really speak to 191 very much anyway—it is still first reading. It's unusual for us even to be here talking about that—

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Brown. You've expired the time. Chief Moore, I want to thank you for being here today and for your deputation. We appreciate it.

This brings to a close our deputations in Chapleau today. We want to thank you for your hospitality. Committee, we will be adjourned and convening tomorrow morning, 9 o'clock, in Timmins. We're adjourned.

The committee adjourned at 1542.

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziatti (Sault Ste. Marie L)

Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mr. Robert Bailey (Sarnia–Lambton PC)

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mrs. Carol Mitchell (Huron–Bruce L)

Mr. David Oraziatti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L)

Mr. Joe Dickson (Ajax–Pickering L)

Mr. Phil McNeely (Ottawa–Orléans L)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Lou Rinaldi (Northumberland–Quinte West L)

Clerk / Greffier

Mr. Trevor Day

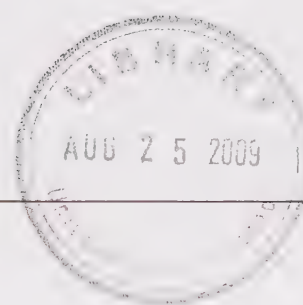
Staff / Personnel

Mr. James Charlton, research officer,
Legislative Research Service

CONTENTS

Wednesday 12 August 2009

Mining Amendment Act, 2009, Bill 173, <i>Mr. Gravelle</i> / Loi de 2009 modifiant la Loi sur les mines, projet de loi 173, <i>M. Gravelle</i>.....	G-933
Far North Act, 2009, Bill 191, <i>Mrs. Cansfield</i> / Loi de 2009 sur le Grand Nord, projet de loi 191, <i>M^{me} Cansfield</i>.....	G-933
City of Timmins Mining Act Committee; Porcupine Prospectors and Developers Association	G-934
Mr. Robert Calhoun	
Boreal Prospectors Association	G-937
Mr. Michael Fox	
Chiefs of Ontario	G-940
Chief Angus Toulouse	
Northwestern Ontario Prospectors Association	G-944
Mr. Dave Hunt	
Whitewater Lake First Nation	G-947
Chief Arlene Slipperjack	
Nishnawbe Aski Nation.....	G-950
Mr. Frank Beardy	
Chief Andrew Solomon	
Chief Jonathon Solomon	
Chief David Babin	
Chief Keeter Corston	
Chief George Hunter	
Chief Randy Kapashesit	
Mr. Gregory Koostachin	
Matawa First Nations	G-962
Chief Arthur Moore	



G-36

G-36

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Thursday 13 August 2009

Journal des débats (Hansard)

Jeudi 13 août 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Far North Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant
la Loi sur les mines

Loi de 2009 sur le Grand Nord

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Thursday 13 August 2009

Jeudi 13 août 2009

The committee met at 0900 in Cedar Meadows Resort, Timmins.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines, and Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

The Acting Chair (Mrs. Linda Jeffrey): Good morning. This is the Standing Committee on General Government. We're here to discuss Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the Far North.

TIMMINS CHAMBER OF COMMERCE

The Acting Chair (Mrs. Linda Jeffrey): Our first delegation this morning is the Timmins Chamber of Commerce. Would Mr. Galloway be here? Come forward; have a seat.

Mr. Galloway, welcome. Thank you for being here this morning. You will have 15 minutes when you begin your presentation. I'll give you a one-minute warning when you get close to the 15 minutes. Afterwards, there'll be an opportunity for questions. Whenever you're ready to begin, if you could state your name and the organization you speak for. You can begin.

Mr. Rob Galloway: Thank you. Welcome to Timmins. It's a beautiful summer day, finally. My name is Rob Galloway and I'm here as the representative of the 750 members of the Timmins Chamber of Commerce. I'm also confident that I'm representing other concerns of businesses throughout northeastern Ontario. We've discussed with many other chambers around the area. Northern Ontario in particular has its origins in prospecting, exploration and mining, as you've heard for the last few days, and continues to be a powerful player in Canada's economy, especially in Timmins and the region's economy.

I was looking at some of the newscast as you've been travelling around the province. You've heard lots of these numbers already. It is vital—the \$6.6 billion that is generated in northern Ontario. Here in this area, in Timmins, we still are doing quite well economically compared to other places. We're lucky that way. A big part of that is not forestry at the moment because it's not doing very well, but it's the diversity of minerals that we depend on and use in this city.

Interjection.

Mr. Rob Galloway: I'm just waiting for him. Good morning, Gilles.

Mr. Gilles Bisson: Sorry, Chair.

Mr. Rob Galloway: I would just like to outline some of the Mining Act amendments proposed in Bill 173 and the concerns that we have with those.

On the withdrawal of land: We realize that there were large pressures on the government to do this, and it is relatively a smaller part of the mining portion of the province, but it still has high potential for value, so we have concerns that we've given away a public asset to those individual landowners, and that will solve some of the quite real concerns and worries that they had. But there hasn't been any knowledge about what that was worth. What are they getting that we, the people of Ontario, will give them as the mining rights under their surface rights? What's that total value and what have the people of Ontario given to those folks? I think that should be known. We also have worries about land that has already been withdrawn from staking even though this hasn't passed yet. We have some concerns over that.

First Nations consultations: Consultation with the First Nations is a constitutional obligation of the crown, and yet Bill 173 appears to transfer some of that obligation to third parties. We have some concerns with that. Entities wishing to prospect and explore have to consult, and that's not the concern; it's that we could spend a lot of time consulting and the First Nation might say, "That wasn't consulting with Ontario, and we need Ontario there." So we very much wish to stay. We know we have to consult with them. There have been lots of agreements in mining already with First Nations—that's the good news—but we're worried about that process: Can it be taken offline with a constitutional issue that this might hinder? We have concerns over that.

We also foresee a situation unfolding in which multiple businesses independently consult with the First

Nations without ground rules, standards, consistencies and timelines, and we think this will be a scenario for chaos, both for business and for the First Nations. It'll be hard for them to adapt, as well, if they get swamped with requests for decisions on exploration plans, for example. So a plan is needed to develop some guidelines amongst Ontario First Nations and the mining industry that will work for now and be flexible enough to change as new practices or knowledge occur.

It's our position that the government remains the best entity to continue to lead that First Nation consultation, set the stage, the ground rules, bring some clarity to what has been and continues to be a complex and sensitive topic. To put the onus on businesses and individual First Nations, where capacities might be limited in either of those, is unfair, we believe.

We have two concerns about the map-staking changes. The first is that map staking potentially gives larger mining and exploration firms an advantage over smaller firms. The reason for that is the larger companies have the technological financing, the capital equipment, in place that can make that much easier. The second concern is that in spite of increased efficiencies that may be achieved through map staking, physical prospecting generates significant economic activity—and that economic value should not be overlooked either. According to MNDMF, \$66 million was spent on exploration in 2008. Also, the prospectors' association has proposed alternative solutions such as real-time GPS location. We think any alternatives to make that easier and more fair should be considered.

Exploration is a starting point of any mine. It's the key to Ontario's economic health, particularly northern Ontario. It is a pillar of our economy here, locally especially. The regulations have not been clarified, and there are concerns about additional costs and burdens to business as we proceed. It's not well defined yet—it's an enabling act, we realize—but has the potential to stunt the development of claims, particularly if either the First Nation or an exploration company lacks the resources to meet some regulatory requirements. We need to see some timelines and guidelines for that process and some funding to allow that process to happen. There are provisions for penalties to businesses, for example, that fail to obey "cease exploration" orders, but there are no penalty provisions for third parties who cause the unauthorized ceasing of exploration. So who in this bill is looking out for the interests of claim holders, explorers and other businesses around the mining activity?

On the dispute resolution part, the fact that the Ontario Mining and Lands Commissioner is not involved with this is a concern for us. There's an expertise there that has been developed over time. Does this mean there'll be two systems, two sets of criteria? Who will do it—individuals or tribunals? To whom will a report be submitted—it says to the ministry at present—and if it is submitted, what are the timelines for the decisions around that? That's the big concern. If it takes too long and it's an onerous process, people will not invest and we won't be mining in this area and any new ones will be much restricted.

It's difficult to say exactly how Bill 173 is going to impact. So many details are yet to be established, and we have a concern about that ambiguity, lack of clarity, and excessive regulation. There are also questions about the right to appeal and how that would work, and that needs to be clarified. What we don't want is a situation where the rules are sufficiently unclear to drive away exploration and investment in our province because exploration companies are confused and face undue administrative pressures from overly burdensome regulations. For example, we heard some mention of independent planning boards, and we don't think that would be a good idea at all. This is 42% of the province, and we think the people of Ontario, represented by the government, can work that through with the First Nations and the businesses and the people involved in the area, and should maintain that.

The lack of clarity really creates uncertainty, and already we're seeing that in investment in the new exploration and mine staking going on. From what we've seen, it also worries aboriginal communities, investors, prospectors and the mining companies. Everybody has concerns over that. We really want to be involved and for others that are active stakeholders in this business to be involved.

0910

Bill 191, the Far North Act: We just want to have a quick mention of this. It has serious implications for northwestern and northeastern Ontario. There is undeniably a need for economic development opportunities for Canada's aboriginals, including those in the far north, but as it's currently written, it has the potential to paralyze future developments in Ontario's far north. There will be no new mines, and 50% of the area is protected already, although it hasn't been defined as to where.

We know communities may lack the capacity to develop community-based land use plans, and we think there's a serious need for funding that's available to them and that's available to those key government ministries that are proceeding with that as well.

We've heard, and echo the call, of a number of groups, including Nishnawbe Aski Nation and the PDAC, for the government to withdraw and reconsider that bill, but we really have concerns over how it will affect the business from this area of Timmins, which supplies the northeast part of that area.

I'm almost done—two more here. This is just from the MNDM's site of the Premier's commitments. The first one there: They ensure the mining industry remains strong—we certainly like that one—and modernize the way it is done and respect landowners and aboriginal communities. There's no issue with that. Steps have already been made that way.

"Ontario believes ... exploration and ... mine development ... take place ... consultation": Those processes are already ongoing. There are various companies that have made great strides in that, so that's not an issue either.

The next one: The protection of 225,000 square kilometres, we found, was arbitrary—is it going to be

community-based planning?—and we've already undertaken that half of it will be in the protected area, so we have concerns about that.

Also, the need for planning and community input for forestry and mines opening “in the ... north would require community land use plans”: If the communities, and the organizations working with them, don't have funding or expertise to proceed on that, it will be a very difficult and long process, and that, to us, is a big worry in that area. That would virtually eliminate the development of mines. The timelines needed for that process, how fast it's going to be done and which areas are going to be priorities are all things that we wish to have some more detail on so people can make investments.

The resource benefits sharing issue that the Premier mentioned is, without a doubt, the largest issue. Most companies we talk with agree with that and would like it to move forward. Not having that hinders the other agreements. If you had that in place and knew what the rules were, it would allow the communities and the businesses that wish to do business to really move forward on the possibilities around their communities.

So in conclusion, Bills 173 and 191 are critical to the economic health of northern Ontario, and particularly in this Timmins area and region. The impact of prospecting, mining and exploration on the Canadian economy is large and cannot be understated. It's important that the full economic implications are explored, understood and reflected in these bills. Care must be taken so that Ontario does not become a mining jurisdiction rampant with delays, disputes, overregulation and confusion. That would not be good for businesses we represent or for those First Nations communities that businesses would be dealing with.

I thank you for your time and consideration of these comments.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about two minutes for each party to ask questions, beginning with Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much for your presentation, Mr. Galloway. First of all I'd like to put on the record that I'd like to congratulate you for your long and distinguished service with the Ministry of Natural Resources, and I'm sure that the Timmins Chamber of Commerce will do well from the experience that you've gained within the ministry. Again, you've done a wonderful job there. Continue on with the presentation that you had today to show that that will continue.

You covered quite a broad area, but you didn't talk about one aspect: the payments in lieu for the perceived ability to tie up tracts of land for development or non-development. Do you have a position or have you discussed that? What do you believe would be the impact on this?

Mr. Rob Galloway: We haven't discussed that particular one very much so far. I think the impact we're worried about is that the delays will happen because of the lack of knowledge of how any process is supposed to

work. We see that confusion already. Investment is sort of slowing in those areas. It's pretty hard to go get new financing to move forward around that. It's that confusion and lack of knowledge of the rules, more than anything, as any one specific thing that people are worried about.

Mr. Jerry J. Ouellette: You also mentioned the concern regarding this from the investing community. Now, I imagine, to use an internal MNR term, the parkies would be very happy within the MNR—

Mr. Rob Galloway: I never use that.

Mr. Jerry J. Ouellette: —within the 225,000 square kilometres. But is that the largest concern? Is it the boundaries of the 225,000 kilometres, or deciding where it is? What is the uncertainty that is felt by the investing community here in Timmins?

Mr. Rob Galloway: The concern is the size of that, and there are no boundaries defined yet that will go forward. So then, what impact will it have? It's unknown. That's the big concern, that and the fact that it takes away over half of the area that there might be mining possibilities in without knowing what you've given up.

So that's the largest concern: It's a huge area that's taken out, percentage-wise, and then the process to figure out: “Okay, what's the schedule for knowing what that is? What are the boundaries? Where can you work? Where can't you work?” On the broad level, with that total plan, and then as each community develops their plan, what will be the process? How are they going to afford to do it? How are they going to have the expertise to do it with, and the stakeholders that they would be involved with; even some of the smaller mining folks, how are they going to have the expertise too? How is it going to be funded? What are the timelines? We don't want to be waiting here long for it to get going and for it to be a process that doesn't end.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson?

Mr. Gilles Bisson: Well, I have two questions. First of all, welcome, Rob. Always good to see you. Just for committee members, as Jerry said, Rob has served with the ministry for a number of years but particularly understands the First Nations stuff right well in his role as—regional manager? Area manager?

Mr. Rob Galloway: Regional director.

Mr. Gilles Bisson: All of that stuff, yes, exactly.

So, specifically to that, on the duty to consult—because you probably understand this issue as much as anybody in this room except for one of your colleagues, or a few colleagues I see in the room here as well, all hailing from the city of Timmins—there is a possibility, the way the bill is drafted now, that the crown will delegate some of that responsibility onto the private sector. The question I have is twofold: One, does that put us in the position of possibly seeing ourselves again before the courts because a First Nations community can say no? The decisions of the Supreme Court have been clear: It's the crown's duty to consult. So is there a possibility for further litigation?

Number two, if there is a way to delegate, how would you see that happening?

Mr. Rob Galloway: Our big concern is around the first one. So you could go through, the company could spend money, time and effort working out a thing, as could the community, and then if something came up and it was deemed that Ontario wasn't there, it's totally invalid. So that's a worry, both for the money wasted and spent at the time and the time process. Why would you invest, then, if you had that concern?

Mr. Gilles Bisson: So can I reword my second question? If the crown has to be involved in being a part of the lead in this, how do you make that happen while at the same time protecting the right of the investor?

Mr. Rob Galloway: I think the crown needs some negotiators or facilitators—I'm not sure what you'd like to call them—who would work with the specific communities involved and the specific businesses involved as they're going in. I think that could be made to work so that it passes the Supreme Court test of being the crown's consultation, and Ontario and the First Nation can sign that agreement and it passes that test, but it can also be done in a good, common-sense way that works out for the community and the business as well. I think there's a way to do that, perhaps.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown?

Mr. Michael A. Brown: Thank you, Madam Chair. Welcome, Mr. Galloway. We've traipsed around this place a bit together too over the years, and I appreciate all the work you've done for the province.

My first comment will be that you know for Bill 191, this bill is in first reading. It is very unusual for a committee to hold hearings on first reading of a bill, and one of the reasons for that is we've come out to get input on it. There will be, of course, second reading, and then, with the co-operation of the opposition parties, there will be another round of legislative consultation on that bill. I just wanted to clarify that so we know.

0920

Two days ago we heard an interesting presentation from the Ontario Mining Association, which takes the view that this bill, the mining act, will assist business in finding investment in the province. I wonder what the chamber of commerce's view of that might be, seeing as the people who invest the dollars seem to believe this act to be a good one.

Mr. Rob Galloway: We agree, even though it sounds like I'm disagreeing, but what businesses we represent and have talked to are looking for is some clarity in that. The act does modernize, does make clear that you have to deal with the First Nations aboriginal communities, and people have been doing that already. The big worries are about what the process is going to be, how it's going to work, and whether it will work fast enough to keep investment there. So there's a possibility, yes. That's good news; you're right. That's why we really want to have people involved in developing those regulations and the processes, and we want a commitment to funding

some people on the government side who are there to work with the local companies and local First Nations, to fund some of the First Nations that are going to need help, for sure. That's the good news on this. Our big worries are about how it's going to work, when it's going to work, and what the decision timeline is going to be. Folks have commented on my past history, but in forestry there are some definite timelines. There have been really large issues, at times, that have put that in place. You need a time that's reasonable for the community—that they have enough time to get their input in, and then it's also reasonable and there's a decision point that happens. That'll be critical to making it work. That's the concern.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Galloway. We appreciate you being here today and your deputation.

Mr. Brown.

Mr. Michael A. Brown: I wish to make a motion that relates to staff from the Ministry of Northern Development and Mines travelling on an aircraft, by the committee. I'll read it, and then we can talk about it.

I move that any available seats on the charter flight back to Toronto be offered to ministry and caucus staff on a chargeback basis.

That's to accommodate some folks who can't get on a scheduled flight, and it saves both the Legislature and the ministry some money.

The Acting Chair (Mrs. Linda Jeffrey): Any discussion? Mr. Bisson.

Mr. Gilles Bisson: I appreciate the difficulty, and as long as it's a chargeback, that's not a problem for me.

The Acting Chair (Mrs. Linda Jeffrey): Any further discussion? Seeing none, all those in favour? All those opposed? That's carried.

PORCUPINE PROSPECTORS AND DEVELOPERS ASSOCIATION

The Acting Chair (Mrs. Linda Jeffrey): Our next deputation is the Porcupine Prospectors and Developers Association.

Good morning. Thank you for being here, Mr. Straub—is that right?

Mr. Kristan Straub: That's correct.

The Acting Chair (Mrs. Linda Jeffrey): Wonderful. We've seen your name a few times. We weren't sure who you were. It's nice to see you. There were lots of people who came forward—not that they weren't good, but we're glad to see you.

So, welcome. You have 15 minutes. When you get close to the mark, I will give you a one-minute warning, and after that there'll be an opportunity to ask questions. Please state the organization you speak for and your name before you begin for Hansard. You have 15 minutes.

Mr. Kristan Straub: My name is Kristan Straub. I'm president of the Porcupine Prospectors and Developers Association. Thank you for providing the opportunity for me to present to you today.

The PPDA is a regional association of prospectors, explorationists and mining industry members that can trace our beginnings back to 1939. Our main function is to advise and consult with the Ontario ministries and departments on any issues that affect the progression from prospecting through to exploration, to mine development and closure. We generally maintain a membership of 120 individuals and 15 corporate members. We have been, by far, the most active regional prospecting and developers' association in Ontario, and are responsible for the establishment and structure of what is now the Ontario Prospectors Association.

Throughout the consultation process surrounding Bill 173 and Bill 191, there have been many erroneous statements regarding the age of the Mining Act in Ontario. The act was first put in place in 1873, and revised or rewritten on a regular basis, with the latest revision taking place in 1990, when the act was modernized to reflect the values of the time, with changes implemented to protect surface rights holders and to simplify the system for maintaining title to crown land mining rights.

At present, exploration and mining activities are governed by the Mining Act and are now heavily impacted by the Endangered Species Act, the boreal initiative, and now the Far North Act and the Mining Act modernization. We operate with permits and guidance from the Ministry of Labour, the Ministry of Natural Resources, the Ministry of the Environment, the Department of Oceans and Fisheries, the Public Lands Act, the Forest Fires Prevention Act, the Endangered Species Act and the Parks Act, among many others.

The PPDA position on Bill 173 and Bill 191: Both acts have been authored and tabled far too quickly, with many contentious issues inadequately addressed, the ramifications of which are not yet fully understood by all stakeholders, including the government who drafted the legislation. The lack of clarity in the legislation as drafted is overwhelming. Given the speed at which these bills have been pushed forward, it is questionable as to whether the government has fulfilled its duty to provide adequate consultation with all impacted stakeholders. To this point, it is the position of the PPDA that Bill 191 is constructed in a fashion which will impair efforts to achieve a balance between economic, environmental, and social and cultural goals in the far north and will only serve to alienate 50% of the far north land mass from the present stakeholders in the region.

Bill 191 in its present form is so poorly constructed that it has to be withdrawn and rewritten to be clear in identifying all of the affected stakeholders impacted by the proposed legislation. Additionally, appropriate funding must be put in place to move forward with meaningful consultation and scientific study on a reasonable timeline to develop a sound foundation for the bill.

The minister's statements on Bill 173 emphasize that the new act takes the form of a balanced approach. Does this mean that the present act is unbalanced? Public opinion suggests that the Mining Act is being rewritten to appease and placate special interest groups, such as

cottagers and certain surface rights holders in southern Ontario, and some general interest groups who do not live in the north. These groups will be minimally affected by the consequences of the proposed change as the Mining Act is an act which mainly affects the land base in northern Ontario.

In an effort to achieve balance, the specific issues that have been identified by our membership with Bill 173 are the following:

(1) Free entry restrictions and security of title. Free entry has been a long-standing right in Ontario, a right that enables an individual or a company to acquire in confidence and hold the mining rights to a specific parcel of land. If the crown allows an individual to stake a claim there, there has to be an inherent right to be able to explore said claim and a reasonable expectation that mining could take place. As one of my colleagues previously stated, upon acquiring the mining rights under the proposed legislation, if a company cannot then explore the property, it's like renting an apartment but having to get permission from the other tenants to move in.

Who, then, is in control of the mining rights? Certainly not the crown, if small vocal groups can force the crown to remove mining rights for the personal interests of special interest groups. How does this achieve balance?

(2) The indiscriminate withdrawal of mining rights. The withdrawal of mining rights with overlying surface rights in southern Ontario should not have been all-inclusive, but should have followed the suggestions for withdrawals in northern Ontario. By enabling the legislation as proposed, the government creates two classes of Ontarians with different rights as fee simple property holders. This process for withdrawal should not differentiate between northern and southern Ontario nor should it provide an absolute removal of mineral rights. Again, how does this achieve balance?

(3) Far too much is being pushed into regulations. The details of specific regulations to enforce and support the proposed legislation have not yet been constructed. The PPDA is concerned with the amount of detail that has been left out of the legislation and relegated to the regulations. Of key concern is the reliance of Bill 173 on Bill 191 for several key points, namely, the community land use plans and the land use designations in the far north. These specific phrases lack a clear and concise definition—a definition that has been left under the regulation. A specific example is how the issuance of work permits by the director of exploration is reliant on aboriginal consultation having occurred in accordance with prescribed requirements. How can we effectively assess the impact of such legislation without knowing what the prescribed requirements are and who, specifically, is required to conduct the aboriginal consultation? Again, no clear, concise information is presented within the legislation.

We ask that the act not come into effect until the full regulatory environment has been created. We also ask that the development of the regulations be via an ad-

visory group, one that is comprised of the key stakeholders impacted by the proposed act. We also ask that the draft of the regulations be posted in the Environmental Registry to allow all affected stakeholders the opportunity for consultation and comment prior to the enactment of the regulations, enabling the balance sought by the minister.

0930

(4) Exploration permits. Exploration permits were put in place in the late 1970s. The previous permits to some degree facilitated exploration and confidentiality and were tailored to indicate simply where you were exploring on a property, the type of work you were conducting and the equipment that was used. These permits were designed to have a 30-day turnaround time, but before they were eliminated in the mid-1990s, the response time became longer and longer, rendering the process ineffective.

The new exploration permit proposal will be handled by the Ministry of Northern Development, Mines and Forestry. It calls for little, if any, deviation from the details of the exploration plan without reapplying for a new permit. Without the allocation of sufficient funds and the creation of a structure to adequately staff the permitting process, unnecessary delays will be created. We need only look at the present situation with the mining lands and the assessment approval process and its inability to respond in a timely manner. Again, how does this achieve balance?

(5) The power of search and seizure exceeds necessity. Bill 173 enables inspectors appointed by the minister to enter, search and seize without hindrance "any place, mining lands or other lands or premises connected ... with any staking," exploration or mining activity without warrant. These powers exceed those of our current police force and only require the inspector to obtain a warrant when the inspector has been hindered or believes there is reasonable grounds that a person will prevent the inspector from entering the grounds. There is no mention of reasonable grounds required for the initial entry. How does this promote a fair and equitable balance between licensed prospectors, explorers and the remainder of Ontarians when we are no longer afforded the same rights?

(6) Downloading the responsibility of consultation with First Nations communities. There have been many issues with consultation that our members have experienced. Past and current experience indicates that some groups do not have the capacity to effectively deal with the present amount of requests for consultation in a timely fashion. What will happen when all active parties are mandated to consult? How will the priority for consultation be established? The prospectors and small exploration companies are certain to take a back seat to the larger, more well-funded explorationists.

The *KI v. Platinex* court decision clearly mandated that the crown has the responsibility to take the lead in negotiations between mining companies and First Nations. Under the proposed legislation, the lack of clarity

on this issue indicates that the responsibility appears to be downloaded onto individuals and companies. Bill 173 is very vague on the issue of dispute resolution, which is sure to arise from consultation between the very persons and groups rather than with the crown.

Presently there are no guidelines for the establishment of timelines for resolution or how the individual in the enviable position can accomplish the mediation in a timely manner. Experiences with the mining commissioner indicate that some issues could take years to resolve. We concur with other associations that Bill 173 will only confuse and create adverse and confrontational situations between industry and First Nations communities, which is contrary to the intent of the bill. Not enough thought or consultation has been input into this issue to come to an amicable solution.

(7) Payment in lieu of assessment to maintain mining rights. Under the present Mining Act, prospectors and exploration companies are required to file assessment work, satisfactory to the Ministry of Northern Development, Mines and Forestry, to maintain their right to explore mining claims in Ontario. This work ranges from airborne surveys over property if it's large enough, to ground geophysical surveys, prospecting, geological mapping and in some cases diamond drilling. Each of these activities has a standard dollar value associated with it and requires the approval of the ministry. Bill 173, however, proposes to allow that the claim holder pay a fee in lieu of assessment work.

There are major flaws in this approach, as the payment of a fee does not create employment in any sector, nor does it benefit the development of a publicly available geoscience information database. The only clear winner in this approach is the general ledger of the government. This fee will enter the government's coffers and will not likely flow back into the NDMF budget to provide the net benefit to the public.

(8) Lastly, the prospector awareness program. The new Mining Act will require that all presently licensed and future prospectors take and pass a prospector awareness course designed to increase their sensitivity to and awareness of the rights of property owners, surface rights holders and the rights of First Nations. In principle, it does not sound onerous, but it would suggest that prospectors over the last 200 years have not been sensitive to these issues, and to that end I would disagree. No prospector has a desire to create conflict with a stakeholder. We are fully aware of our need to coexist and maintain confidentiality for a period of time as they complete their work, prospecting and acquiring land. The work of a prospector is to prospect and acquire mineral rights. The present act clearly lays out where they can stake, how to stake in areas where someone else owns the surface, and to report to that surface owner the fact that they have staked the ground before they continue to do any work. The present act clearly lays out the rules regarding compensation due to the surface rights holder, and these cannot be contravened.

As for the rights of First Nations, the government is obligated to make prospectors aware of these rights and

to set the rules around these lands in consultation with the First Nations. The mining industry and prospecting in the province are highly regulated at this point, and requiring a long-term prospector to pass an awareness course seems to us to be unnecessary.

In closing, Bill 173 and Bill 191 have been tabled to the Legislature long before they are ready. It is clearly done for political posturing, with little regard for full consultation with all parties impacted. The full ramifications of the proposed legislation and regulation may not be fully understood for 20 or more years. Is this government willing to be seen as a government that would rather do something quickly to placate special interest groups or would it rather be recognized as working in the best interests possible for all Ontarians?

The parks act is in place to protect parks, the environmental act is to protect the environment and the Endangered Species Act protects endangered species. Why does Bill 173 penalize the mining industry and place roadblocks in the search for, and development of, new mines, a much-needed wealth generator for the province of Ontario? The future of Ontario, if this legislation is enacted, is that the rocks hosting the mineral deposits do not stop at the provincial boundaries. If this bill is not changed, the grass will always be greener across the border and further exploration funds will flow to other jurisdictions. Any further erosion of the wealth generation in the province is a disservice to all Ontarians.

Thank you. I will now be pleased to answer any questions you may have.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. You've left about two minutes for each party to ask questions, beginning with Mr. Bisson.

Mr. Gilles Bisson: I too, when I first read the bill, looked at the section on powers of search and was a bit taken aback. In fact, I called a number of people in industry to have them look at it. What could happen under the powers of search now? What could happen under this new bill, under the powers of search section, that couldn't happen now, and what would that mean?

Mr. Kristan Straub: As constructed under the new proposed act, it consolidates all of the procedures around inspection and search and seizure. Therefore, it reinforces that power through there. The disconcerting part to prospectors, explorers and mining companies is that it now enables the inspector, as a designated representative of the minister, to enter property without warrant. It's simply the lack of regard for having grounds warranted to enter and inspect a property.

Mr. Gilles Bisson: Do you feel that could be abused?

Mr. Kristan Straub: I would not suggest it has been abused in the past, but any time legislation is enabled and laws are put in place that allow for abuse, it brings up the possibility for it happen. I think it's just a lack of understanding of how to put it together.

Mr. Gilles Bisson: I thought your section on the exploration permits was good because there was a reason why we got rid of them. So bringing them back means what, in the long run?

Mr. Kristan Straub: In the long run, returning the exploration permits to this process—the permits as outlined in the current act, with the level of detail required—will not allow for an efficient exploration process to take place. With the permits proposed, with the detail required and through it, it severely limits and impacts the ability of an explorer, prospector or mining company to actually execute an exploration and change that plan as results are warranted. It'll further drive exploration dollars out of Ontario and out of the north.

The Acting Chair (Mrs. Linda Jeffrey): You have 15 seconds.

Mr. Gilles Bisson: I'm happy to see you here.

Mr. Kristan Straub: Thanks, Gilles; happy you have finally made it.

Mr. Gilles Bisson: What are you going to do with 15 seconds?

The Acting Chair (Mrs. Linda Jeffrey): Not much. Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing. I think the various prospectors associations that have come before us have provided us with some good food for thought as we move forward in this consultation. As you know, one of the criticisms of this act is that much of it will be put in place through regulation, and there is a reason for that: The field out there, if I could call it that, is rapidly changing. The issues surrounding aboriginal consultation, a whole host of technological changes, cause differences to happen, and as you pointed out, the last time there were any serious amendments to this act was in 1990, which I was actually around for.

I guess regulations give us and the industry, and the other stakeholders, the opportunity to more quickly change the reality of the day we're in, and of course court decisions and other decisions have changed the way we do business. Would your association commit itself to work with the government to develop regulations that are appropriate for now and on an ongoing basis?

Mr. Kristan Straub: Thanks for the question. I can understand the government's rationale for wanting to move more into regulations and remove it out of legislation, because of the onerous task of amending and changing legislation. But the one caveat is that regulation no longer affords the public scrutiny that legislation does in that process. That's our main concern.

0940

On the latter part of your question, we would be more than willing to work with the government to develop regulation on an ongoing basis.

Mr. Michael A. Brown: The point about consultation is one that, I think it's fair to say, governments across the country are grappling with on a number of issues with First Nations. The actual definition of what a consultation is will change, as we've heard at these committee hearings, depending on who you're speaking with. So defining that will not solely be a prerogative of government or industry or First Nations. The courts will, I'm afraid, at some point, be back—

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Brown.

Mr. Michael A. Brown: Oops. Sorry.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. The First Nations communities have been asked to develop land use planning initiatives. As a prospector in your association, how do you determine—do you think these land use planning initiatives will resolve traditional lands and where claims can be staked or not?

Mr. Kristan Straub: I don't believe that the development of land use plans, as constructed in Bill 191, will aid us in any way, shape or form. I believe that the length of time required to develop those land use plans, and the uncertainty created around that length of time, and the uncertainty created around the security of mineral title through there, will only negatively impact this end of the industry in Ontario.

Mr. Jerry J. Ouellette: So do you believe that prospecting will cease while those land use planning initiatives are being developed?

Mr. Kristan Straub: I would not go on record or ever say that prospecting would cease. I think prospecting in that area will be relegated to a group of persons with a higher level of risk, just like you see mining and activities taking place in Zimbabwe and the Democratic Republic of the Congo. There are areas in this world where persons of high-risk tolerance will continue to explore for mining, for mineral rights. I think that when you relegate—when you increase the lack of security around mineral interests title in the north, which these bills will do, you will then relegate it to higher-risk explorers.

Mr. Jerry J. Ouellette: Would timelines, do you feel, in developing these land use planning initiatives speed that process up or resolve a lot of it for you?

Mr. Kristan Straub: Timelines will, if we can adhere to the timelines and if we can get to a process where all stakeholders will agree on the timelines. I think that timeline, right now, is an undeveloped timeline.

Mr. Jerry J. Ouellette: How do you think that prospectors wanting to go on to traditional lands for prospecting purposes would follow through, with the processes laid out in the bills, to stake a claim in a First Nations community, where consultation is required before going on to the property? How would that unfold?

Mr. Kristan Straub: Sorry, I didn't want to interject in your question. I missed the first part of it.

Mr. Jerry J. Ouellette: How would—

Mr. Kristan Straub: Sorry.

Mr. Jerry J. Ouellette: The impact of the legislation—

The Acting Chair (Mrs. Linda Jeffrey): It's a long question, so it's going to need a really short answer.

Mr. Jerry J. Ouellette: The impact of the legislation: How is that going to affect—how is a prospector going to be able to go, eventually, on traditional lands? Is it going to be them doing the negotiation? Do they approach the province to go do the negotiation? Do they approach a company before? How?

Mr. Kristan Straub: I believe the crown has the required duty to consult with the First Nations beforehand, and the crown has the responsibility to put in place a framework for prospecting to take place through there. If the mineral rights are truly held by the crown, then the rights and access should be open for all. How should we be differentiated from anyone who's willing to go in and partake in a canoe trip or fish down the areas and through there?

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Straub.

Mr. Kristan Straub: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you for being here today. We appreciate it.

CITY OF TIMMINS

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the city of Timmins. I believe I have Councillor Doody. Is that right? Welcome. Thank you very much for being here today. We appreciate it. As I stated earlier, you have 15 minutes. If you could state your name and the organization you speak for, you'll have 15 minutes. I will give you a one-minute warning if you get close to the end. We'll be asking you questions afterwards.

Mr. Michael Doody: Thank you. Michael Doody, councillor, city of Timmins.

Madam Chair, members of the committee, I'd also like to acknowledge our member of Parliament for the riding of Timmins—James Bay, Gilles Bisson. Nice to see you here this morning.

On behalf of Mayor Tom Laughren, members of city council and all citizens who owe their existence to mining, I welcome to Timmins your government's consultation process to hear our views with respect to modernizing Ontario's Mining Act.

Mining is the *raison d'être* of our city and has contributed to the sustained economic life of our community for many years and, we hope, for many more. In fact, this year we're celebrating our 100th anniversary of mining in the Porcupine.

Your government's review of the Ontario Mining Act will have a profound effect on our city, and for this reason I feel an extensive amount of consultation is required.

Mining is an important economic driver for all of Ontario, but recently our position in the world has become somewhat lessened. In 2001-02, Ontario's investment attractiveness rating was two, only surpassed by Quebec. In 2005-06, it decreased to nine. In 2007-08, it further decreased to 27. We cannot allow this trend to continue, nor can we make policy decisions that would increase this deterioration.

In addition, our manufacturing sector is suffering and the forestry industry is facing very serious challenges. We cannot allow Ontario's strength in mining to crumble.

The city of Timmins supports the government's objective to ensure that mining legislation promotes fair,

balanced and sustainable mining development that benefits all Ontarians. The key to this objective is balance, and we, as leaders, must ensure that the mining industry is allowed to explore, develop and grow within the parameters of fair legislation and regulation.

When the announcement was made in August 2008 that your ministry intended to enact legislation to amend the Mining Act, a committee was convened to study and reply to the proposed amendments. This committee brought together representatives of the city of Timmins, the Timmins Economic Development Corp., the chamber of commerce, the Porcupine Prospectors and Developers Association and interested members of the general public. The committee was structured in this manner to provide a broad and balanced perspective to the discussions. The committee carefully evaluated each proposed change and prepared a response to provide our comments to your representatives. It was with great interest that we watched the rollout of the bill through your webcast on April 30, 2009, and read the bill as published.

We applaud the effort by the ministry to develop a balanced approach in the amended act, but we have significant concerns with the bill as presented. One major concern is the amount of legislation that has been relegated to the status of regulations, which, it is our understanding, will not be prepared until the bill is passed. It would have been preferable to have more law than regulations, as regulations can be manipulated without consultation or parliamentary approval. That being said, we hope that, at the time of writing the regulations, the ministry works toward the balance promised and includes representatives of the northern mining communities, which will be most affected by these changes.

The Mining Act, although based on 100-year-old principles, is more modern than that, and several people in our community were part of the group that participated in the last major overhaul in the late 1980s and early 1990s. During the public session in Timmins, we strongly indicated that land access and surety of title were paramount in the development of mineral properties. Investors need to know that once a claim is staked, the right to mine any minerals found in that claim is assured, subject to the environmental assessment required under the present Mining Act. Far from providing certainty to the issue, the words in the amended act create uncertainty and, in the case of the far north, have jeopardized companies' ability to raise money for exploration.

In southern Ontario, the amended act has returned, or given, the mineral rights under lands with a surface rights owner to that person or entity. Although the amount of land returned was small, the value of that land was not predetermined and could be very significant. Giving away this land was a disservice to the people of Ontario, as the act states that if not used for mining purposes, it is not taxed as mining lands. Bill 173 states that the withdrawal of these lands would occur when subsection 35.1(2) comes into force, which should be the day the amended act comes into force, but the lands have been withdrawn already by order of the minister.

The amended act has placed a burden on the First Nations in the far north that they may not have the capacity to bear. The development of any new mines in the far north is dependent on the development of land use plans commissioned and authorized by the First Nations. We feel that, at the present time, the First Nations may not have the capacity to develop these plans in a timely fashion. Any delay in producing these plans will force global exploration companies to look elsewhere for potential mineral resources—once again, a disservice to the people of Ontario through the loss of jobs and tax revenue.

0950

The exploration industry is currently suffering from lack of investment funding due to present economic conditions, and with fewer dollars at their disposal, risk management dictates that the funds be used where success is most likely and tenure assured. This may not be in a far-offshore location; it may be in jurisdictions immediately to the east or west of this province.

The amended act also requires companies to obtain exploration permits, with the rules surrounding these permits again being part of the regulations. These permits, which will be submitted to a director of exploration, will require First Nations approval in areas of traditional lands. Again, the First Nations that have been reluctant to designate these areas in the past will determine their traditional lands. The companies will be required to consult First Nations before exploring, and this could be an overwhelming task if the area becomes part of a hot target area, like the McFaulds Lake Ring of Fire. With multiple permit requests flooding any First Nation, delays will be inevitable.

Assessment work is required, under the act, to keep claims in good standing and is time-sensitive. When will the assessment clock start? Presently it is on the date of filing the claim, but will the regulations change that to the date the exploration permit is issued? Exploration plans will be required to obtain the permit, with all plans being stipulated at that time. In an industry accustomed to quickly following up on success, this does not allow for the flexibility and timely re-evaluation of programs where success or failure dictates or requires a change in the plan.

Raising funds on the open market is highly dependent on timely dissemination of good news. If the news is delayed for any reason, the interest of investors is lost. They move on, and the ability to raise additional funding is severely compromised.

The present act and the amended act both require First Nations consultation. This consultation can be costly and time consuming. For large companies this is not an insurmountable problem, but for junior mining companies it may present a barrier they are unable to overcome, forcing them to re-evaluate where they spend their exploration dollars.

We feel that negotiation of the right to explore falls within the mandate of your ministry, and the Supreme Court of Canada has heard arguments—that has found in

favour of that opinion. To have several companies negotiating several deals in a vacuum serves no one, whereas if the government took the lead, the rights of the First Nations and the right to explore could be determined more appropriately and could form part of the act.

The introduction of inspectors, in our opinion, plays into the belief that the mining companies have something to hide and are circumventing the law. These inspectors will have more power than police and will be able to enter and seize without warrants. Their authority to do so is outside the rule of law. Moreover, they can be any representative of the ministry and, according to the act, require no training. It is the responsibility of MNDM to support the environmentally sound development of the rich resources of this province for the benefit of the people, and we feel that the amended act hinders that development and subscribes to the notion that the exploration and mining industry is underregulated, when in fact it is one of the most highly regulated industries in the province.

We welcome the opportunity to continue the discussion surrounding the development of the amended Mining Act and our concerns, and will make ourselves available to the ministry in the development of necessary changes to the act in the regulations. We hope that as the ministry moves forward with these proposed changes, northern communities will be included in round-table discussions so that the modern Mining Act can create the balance that will benefit all of Ontario and provide the economic development that is needed in the north. We in Timmins look forward to hosting such a round-table discussion. Thank you. Merci. Meegwetich.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Councillor. You've left about three minutes for each party to ask a question, beginning with Mr. Brown.

Mr. Michael A. Brown: It's good to see you, Mr. Doody. I appreciate you coming here on behalf of the municipality. Timmins, of course, is one of the great mining camps in Canada and employs a great number of people in northern Ontario directly, right here, or in the offshoots, the prospecting and equipment sectors of the industry. So I realize the strong stake the municipality and its citizens have in the act. You're right, the last major change to the act was in the late 1980s—I guess it was proclaimed in 1990—and I was part of that.

I guess the question the government has is—we go and we hear deputations, and we hear some people say, “You've moved too quickly. You are not coming to decisions. It's not spelled out well enough. You haven't consulted enough,” and then we hear people say to us, “Well, you should have had more clarity but we need it right now because we're having trouble in certain parts of the province staking these claims.”

So I guess we're at the point where decisions need to be taken relatively quickly. What I hear you saying is that the municipality and the interests within it want to be consulted in the drafting of the regulations. Would that be a fair statement?

Mr. Michael Doody: I think that would be a fair statement—giving the feeling to the people who are

directly involved in the mining industry that they've had some input and to feel when we have the finished product that everybody can sit across the table from each other and say, “We did everything we could to work together and we think we've produced a fair document.”

Mr. Michael A. Brown: Bill 191 is also part of this consultation. It's in first reading, so that's a very unusual process for the government to undertake. We're out here for the very reason that we want to hear what people have to say about the initial act and then we have the opportunity after second reading, if it gets second reading, and I presume it will—but if it does, with the consent of the opposition parties, we intend to take it out for another public consultation at a legislative basis. So we're hoping to include, given the support of the opposition parties, the northern communities again in that consultation so that we can move forward, because we do need the certainty, and the old act isn't providing it either. So we need to move, and I think it's fair to say that there are people on both sides at a standstill: “You're going too fast”; on the other hand, “You're not moving fast enough.”

Mr. Michael Doody: It's a dilemma that you people are faced with, but I certainly think that at any time you're willing to sit down at a round table to get input from people who make their living at it, their families depend on it, and our future—as Mr. Bisson knows, this is my 26th year in municipal politics in the city of Timmins. My dad made his living as a prospector. All you have to do—and I remind all members of Parliament in the province of Ontario: Take a look at the true map of Ontario that is the true scale of the size of northern Ontario. When you take a look at that, I like to say that Canada is very lucky that the province of Ontario is the breadbasket of natural resources, not only for the province but for the country and the world. Yes, I think there are times that it becomes delicate, what we're doing, and we're probably at that time in our history. We are discussing things that we never thought we would discuss before with First Nations people. At our very first meeting that we had—in fact, we were the first community to have a public meeting once it was rolled out on the Web page. We had it here and, you know, at the end of it, people got up, there were strong feelings; people attended from the south. We just said, “All we want is a document that is fair.”

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. You had mentioned about how Ontario has moved as a place to invest in the mining sector from I believe it was second to 27th. In those same time frames, have you seen how Ontario has been listed by organizations who are viewed as protectionist jurisdictions or how the changing of Ontario has taken place? Has there been an equal balance reverting Ontario?

Mr. Michael Doody: I truthfully can't stand here in front of you and tell you that.

Mr. Jerry J. Ouellette: That's okay.

Mr. Michael Doody: We got those figures from the Economic Development Corp.

Mr. Jerry J. Ouellette: During the Lands for Life process that took place, there were provisions that allowed for flexibility on boundaries of parks. I know for a fact, and Mr. Galloway would know as well, the Montcalm mine enacted one of those and allowed the park boundary to be changed to accommodate the Montcalm mine.

This new protected area is 225,000 square kilometres. Some of the difficulty is that it would be virtually impossible for any claims to be moved. What do you think the impact of that would be? It would completely eliminate—whereas at least the Lands for Life gave accommodation to have the flexibility to change that boundary.

Mr. Michael Doody: That is very true, but someone said to me just the other day, “Just think if the province somewhere down the line had designated the Porcupine as a park.” Each and every person that lives in this community is here because of mining. I don’t pretend to have all the answers. Decisions have to be made and you live by those decisions. “Flexible” is a good word. I have no problems with that at all.

1000

Mr. Jerry J. Ouellette: Some of the other difficulties are that in protected areas—the definition of “protected area” is that there is no mining, there is no commercial forestry operation and there’s no new hydro development to take place. When the stipulation as laid out by the 225,000 square kilometres runs the entire length of the province, essentially, from what I understand, the difficulty in some of the parks areas is that you are unable to cross those areas. So, for example, if a mine should take place or a forestry sector should take place on the opposite side of that, there’s no provision in some of the parks now to be able to even cross those areas unless they’re flown in. What do you think would be the impact for the areas north of the protected area if it’s going to be so-called “open” for development?

Mr. Michael Doody: Well, it’s a decision, and there should be a body that should be able to take a look at it. Some of what I think is going to come out of this, and I think from everybody that is involved and has been in the round-table discussions, is that you have to have people from all sides of the issue sitting on these bodies that make the decisions. Generally speaking, most people are willing to take a look at it at face value and some of the times the decisions are tough. But if the people who are being affected sit on those particular bodies, I think that would be acceptable.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Bisson.

Mr. Gilles Bisson: Just a couple of things. First of all it’s true that this bill, Bill 191, the far north planning bill, is in first reading, but to say that this is earth-shattering is a bit of a stretch. The reality is that this bill is at first reading, it might even get withdrawn at the end of this process—I would be surprised if it wasn’t—but if it does come back for second reading, the opposition obviously wouldn’t stand in the way of having any kinds of public hearings on it.

The payment in lieu is what I want to touch on, because you have a pretty unique perspective; I’ve known you for years. Your dad was a prospector and made his living at it. What’s being proposed in this bill is that we go to map staking, and at the end of the map staking process, when it’s finally fully implemented in five years, a mining company or an interest of some type—it could be a company in Chile, it could be a company in China or somewhere in Texas—decides that they’re going to stake a whole bunch of territory, let’s say, around the Ring of Fire in Attawapiskat because they think it’s interesting. In order to hold on to that property for a long period of time so that nobody else can get it, under this legislation they’re going to be able to make a payment in lieu for work that would normally be done on that property to keep that claim in good standing. What does that mean to you, from the perspective of a northerner and somebody with some experience, but what does it mean for mining overall?

Mr. Michael Doody: As a very young body who had to follow my dad to stake claims, whether it was in the dead of winter or in the heat of summer—I think there’s a very strong feeling, Gilles, that it’s something that is being taken away from the prospecting culture. Again, there are both sides to it too. I don’t want to use the word “small,” but the low-level prospecting at a small company as opposed to maybe one of the big multinationals from wherever who just do the staking by computer—I think there is that feeling. So what is fair? You’d slice it down the middle? It’s a difficult question.

Mr. Gilles Bisson: Do you think it’s fair, though, that somebody could be allowed to hold on to a claim even though they’re doing no geological work whatsoever on that claim?

Mr. Michael Doody: Doesn’t sound very good.

Mr. Gilles Bisson: Do I still have time? My oh my, this is so much fun.

The Acting Chair (Mrs. Linda Jeffrey): You have 52 seconds—

Mr. Gilles Bisson: You made a comment in regard to exploration permits, and I just want to understand something: that the timing by which the permit is issued is critical. I want you to explain that a bit.

Mr. Michael Doody: I would have preferred that you would have asked—I think Bill is coming up to speak.

Mr. Gilles Bisson: Okay. I’ll ask it later because I think that’s a very important point. Other than that, thank you for coming before us.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much, Councillor. We appreciate your being here today.

Mr. Michael Doody: I appreciate being heard. Thank you.

FORT ALBANY FIRST NATION

The Chair (Mrs. Linda Jeffrey): Our next delegation is Fort Albany First Nation. Is there someone here? Good morning and thank you for being here today. If you could

state your name and the organization you speak for, you'll have 15 minutes. I'll give you a one-minute warning if you get close to the 15-minute mark, and there'll be an opportunity for us to ask questions. You can begin whenever you're ready.

Mr. Chris Metatawabin: Thank you, Chair. Thank you, committee members, for allowing us to make a statement. My request to travel down to Timmins was turned down, so we didn't really prepare a statement at that time. We were surprised. We had a telephone call from the MNR office here in South Porcupine, and they provided two tickets for Fort Albany to fly down here. I'm here with Joseph Sutherland, a councillor in Fort Albany. He has the portfolio of economic development. My name is Chris Metatawabin, economic development officer for Fort Albany First Nation. I'm also glad to hear that the MNDM is getting a seat with the charter to fly down back to Toronto. That charter should have come to Fort Albany too.

Being sort of taken by surprise and showing up here at the table, we just made a rough speech, a statement or point of view.

Government talks about new partnerships with aboriginal people and putting First Nations into the driver's seat for land use planning and development, but they don't resolve territory and governance issues. Therefore, the government continues to prevent First Nations from being in the driver's seat and from defining development on First Nation terms.

Tabling legislation already defined and developed demonstrates that Ontario thinks of itself as the driver. Consultation on something already written undermines the ability of First Nations to define their own approaches to development. Rapid pace and timing over the summer months when everyone is away is extremely problematic for First Nations. We don't have enough time to get together, to analyze and to develop a common position. Cree and Ojibway territory relationships are based on principles of a collective rather than private property, and the process undermines the ability for a collective response to be developed. A collective takes longer as it needs to be based on meaningful, community-oriented dialogue where everyone understands the issues using the Cree language, etc.

Language is problematic with the legislation. Aboriginal leaders think they are on equal footing with the language but they are not. Legal language is constantly changing too, and can be shaped and changed according to those who can work the language best. People at the grassroots level are left out of real decisions because of inaccessible languages that are rooted in a different world view. Decisions are being made down south and not in our homelands. There are no resources for simultaneous translation, and things get lost in translation because of timing.

As for the title of Bill 191, this opens the door for anyone to come in and do what they want. They define their stake in the territory. We should have a title like "Treaty 9," "Land Use Planning," "Land Decisions" or

something like that. It should be specific for the people of the area. The current title opens the doors for anyone. This is demonstrated by the recent position statement by the prospectors association, for example, who have already criticized the legislation because of the potential limits to their own interests in mining and development, etc., in the area.

We are trying to preserve a culture, identity and a way of life, like the Paquataskimik term that describes a way of life. Government is trying to ensure profit is made and then they will disappear after, as has happened elsewhere in Ontario. We want a policy that will keep our identity alive. We want to make a living off the land, but we need resources to do that. We don't get any revenue trying to live in the bush; all we can get is money from welfare. If the area is to be kept alive according to an aboriginal worldview, then resources need to be given to support that way of life.

1010

Newcomers, like the immigrants, who are made to pay taxes are given services and funds for all sorts of programming etc. Aboriginal people, whose land is the basis of the Treaty 9 agreement instead of taxes, are not being afforded the same support as immigrants. Aboriginal collective land ownership is not understood or recognized, and becomes undermined through the policy process which favours private property, individual property rights and taxation.

The Indian Act, 1876, is protectionist, as it makes aboriginals be put into areas like a zoo; we are, like animals, put on reserves where people like tourists come to look, take pictures, rather than letting people like us live our lives as autonomous and self-sustaining communities. We are just learning about capitalism, the exploitation of land. Back in 1492 we had to train Europeans how to survive off the land. Once the resources are depleted we might have to go back to that same relationship, like in 1492.

Coming to a conclusion, I have some questions for your consideration. We know that the Green Energy Act has a lot of clout in the province, and if we want to protect an area through the Far North Planning Initiative, like the Albany River, for cultural and ecological purposes, does the Green Energy Act supersede the far north planning initiative in areas we want to protect?

Along the same lines, the already-existing northern rivers agreement sets out 25-megawatt limits to hydro development along the Albany River. Does this get superseded by the Green Energy Act? Can the far north planning initiative allow for us to designate the Albany River as an ecological and cultural heritage site?

On behalf of Fort Albany, we thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. You've left about four minutes for each group to ask questions, beginning with Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much for your presentation. A couple of questions: How is it that your community determines its traditional land areas? People in the south always view that First Nations' tra-

ditional lands are always reserve land, and they don't gain a different perspective unless we get these sort of things on record. How is it you and your community determine traditional lands?

Mr. Chris Metatawabin: Before MNR was around, the Inninuwig people were roaming all over that area, the coastal areas of Hudson and James Bay. So that was a tribal area. We were not separated as it is right now; there was no Attawapiskat, there was no Peawanuck; there was just Inninuwig living in that area. It's only when MNR came around that we were put into reserves like Fort Albany, which lives on only 144 acres of land. That is not going to help us in the future. We are overcrowded in that same reserve space, so we need to overlap. We need to claim that whole area.

Mr. Jerry J. Ouellette: Yesterday we heard from Frank Beardy of the Nishnawbe Aski Nation, who spoke about the \$30 million that was made available. He expressed that \$20 million of that, or over \$20 million, was for internal use only. What do you think for your community, for the consultation process and to be able to get to and from the meetings and to attend, to get the message back and forth: How much would a realistic cost be associated with developing that for your community?

Mr. Chris Metatawabin: The Nishnawbe Aski has 49 communities in a large area. We managed to get \$19,000 from Nishnawbe Aski to do a preliminary land use project. That was only enough to cover one worker, so to do comprehensive land use planning for each community—also, to ask for technical assistance to help us do that—I would think that \$1 million for each community times 49 would be a starting point, but to do really comprehensive land use planning for the whole area, we might need more.

Mr. Jerry J. Ouellette: So that would be \$1 million that you would have access to, not \$1 million allocated where portions wouldn't be occupied by the various ministries involved, correct? Your community would essentially need \$1 million to be realistic in order to implement everything.

Mr. Chris Metatawabin: I would prefer it came from one entity. I don't want pieces from different ministries.

Mr. Jerry J. Ouellette: It makes it more difficult for the application processes.

Mr. Chris Metatawabin: That's right.

Mr. Jerry J. Ouellette: I'm not sure if you have any midline radar sites in your community or in the area.

Mr. Chris Metatawabin: Yes, we do.

Mr. Jerry J. Ouellette: How have they been cleaned up?

Mr. Chris Metatawabin: Fort Albany was cleaned up a few years ago, but there are still pieces from that site in the community. We have the generators at the hospital sitting right now. Those are from that area. They're still sitting at the hospital, not being used.

Mr. Jerry J. Ouellette: So there are still lots of problems. Potentially, this 225,000-square-kilometre protected area would take on a responsibility of cleaning up a lot of these mid-line radar sites, you would hope.

Mr. Chris Metatawabin: That's right, especially up in the Fort Severn, Peawanuck and Attawapiskat areas. They have more areas to clean up and more distance.

Mr. Jerry J. Ouellette: One last question—

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Thank you very much, Chris. I'm glad you were able to make it here. Unfortunately, the committee did not vote as a majority to allow your trip, but the MNR went to bat. We want to thank the MNR for that and thank you for coming.

A couple of questions: You'll be aware that OPG is looking at the potential development of hydro on the Albany River. You mentioned the Green Energy Act. There's a possibility under this act that, in fact, we could end up protecting part of the Albany River—that would essentially take that away from any possibility of development. If such a decision was to be made, who should make that decision? Who should have the power?

Mr. Chris Metatawabin: I don't think we need to protect Fort Albany. That polar bear park up in Peawanuck—it doesn't serve anybody. The polar bears don't live there. They roam wherever they please, so we should get rid of that polar bear park. It's the same with the Albany River. We don't need a protected area. We just want that for our own use to follow our way of life called Paquataskimik.

Mr. Gilles Bisson: The potential is that if parts of the Albany River or territories in and around your community are protected, you could end up in a situation where some forms of traditional use may be prescribed as not being legal, for example, hunting or gathering. So my point is that if we're going to get into any of these kinds of discussions, in your words, who should be driving the decisions?

Mr. Chris Metatawabin: I see. I think that community awareness training is a first step. People have to understand the whole project using the Cree language. We need facilitators to spread the word. Then, once we get the consent from the people, the project can proceed from there.

Mr. Gilles Bisson: So you would have to be in charge?

Mr. Chris Metatawabin: Yes.

Mr. Gilles Bisson: Okay. One of the things that is raised in part of the debate around this legislation is the issue of consent. The way the bill is currently written, there is no requirement that there needs to be consent on the part of First Nations to allow development to go forward. I find that a little bit odd because in municipalities—for example, here in the city of Timmins, as you might know, Goldcorp is looking at reopening the Hollinger pits smack dab in the middle of the city of Timmins, and we as citizens have a say because they would have to get permission from the city to do that. Our community members here in the city of Timmins have to give consent to Goldcorp in order to go forward with that project. Yet, in this legislation, we're not going to give the same type of right to First Nations. It kind of boggles my mind. So my question to you is: What do you

have to say about that, when there seem to be two different—I don't want to use the word "classes" of citizens, because that's a bit strong, but that you're being treated differently than others?

1020

Mr. Chris Metatawabin: I think the first problem is the language barrier. When we had dealings with De Beers when they first came up to spread the word about the mine, they sent their engineers and they were using \$64 words to explain the project. The translator had a hard time translating for De Beers to promote that project to the local people. We didn't understand what was going on. So I think any extraction company coming into the area should hire some local people who speak the language to be part of the negotiating team, to translate for them on a daily basis in order to make that project understandable to the local people. So it's language that we have to overcome.

The Acting Chair (Mrs. Linda Jeffrey): Ms. Mitchell.

Mrs. Carol Mitchell: Thank you very much for coming and making a presentation today.

I just have a couple of questions. You talked about the Green Energy Act and the potential within your community, so I just want to expand a bit further from where Gilles went. Part of the Far North Act is the community-based planning. Do you see that as an important piece of moving forward on any renewable energy project?

Mr. Chris Metatawabin: As long as we're in the driver's seat in defining the land use plan for our communities. We don't want to use the English language to define the land use plan because it tends to be neutral; it doesn't specify who's part of the group. That's why we want a specific name like "Treaty 9 land use plan," because it identifies the people who live there, who will always live there, who need to survive there. That's why we need to be in the driver's seat in determining these legislation papers.

Mrs. Carol Mitchell: So you see that as the larger community.

Mr. Chris Metatawabin: Yes.

Mrs. Carol Mitchell: And specifically, you said Fort Albany—144 acres?

Mr. Chris Metatawabin: Yes.

Mrs. Carol Mitchell: That is the acreage today.

Mr. Chris Metatawabin: Yes.

Mrs. Carol Mitchell: I just wanted clarification: You also talked about \$1 million. Was that per—

Mr. Chris Metatawabin: Per community.

Mrs. Carol Mitchell: So Fort Albany, at 144 acres: You're looking for \$1 million for planning purposes?

Mr. Chris Metatawabin: Yes. More than that, too. We want to start with \$1 million, but if we need to do more, then we need more.

Mrs. Carol Mitchell: So that \$1 million would be used in your community of 144 and not the larger community of the Treaty 9.

Mr. Chris Metatawabin: No, all the communities inside Treaty 9. Each community should have a baseline like that.

Mrs. Carol Mitchell: How would you allocate that \$1 million? What would you use that \$1 million for?

Mr. Chris Metatawabin: For land use planning?

Mrs. Carol Mitchell: Yes.

Mr. Chris Metatawabin: Well, for Fort Albany, we need to hire our technical assistance people. We also need multimedia technology to document all this information. We also need to hire our own aboriginal—the elders' knowledge. We need to identify them as specialized people, almost like technical assistance people, to be paid at the same level as these consultants from outside.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today. We appreciate your being here on such short notice.

ATTAWAPISKAT FIRST NATION

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Attawapiskat First Nation. I believe Chief Hall is here, and Jennifer Hill.

Good morning. Thank you for being here. Are you both going to be speaking today?

Chief Theresa Hall: No, just me.

The Acting Chair (Mrs. Linda Jeffrey): Terrific. You have 15 minutes. When you begin, if you could say your name for Hansard and the group that you speak for, you'll have 15 minutes. I'll give you a one-minute warning if you get close the 15-minute mark, but whenever you're ready, begin.

Chief Theresa Hall: Thank you. I'm not sure whether I can do it within the 15 minutes. That's not how we do it with my First Nation. When people come to our community we allow them as much time as possible to address their issues, so right away there's the difference of cultures that we face right now. Those are the kind of barriers we experience all the time in our communities and in our lives.

I will read the paper that was prepared with my council.

Good morning, Chairperson and members of the committee. I'm Theresa Hall, Chief of Attawapiskat First Nation. I'm pleased to have this opportunity to address my community's concerns with respect to Bills 173 and 191 as a First Nation community in the far north with a diamond mine in our traditional territory.

To begin with, I would like to share with you a bit of our community governance and experience with mining development before I make remarks about the two bills. Traditionally, we occupied a large area that extended from Kapiskau River in the south to the Hudson Bay in the far north, from Akimiski Island to Lake Missisa in the west. We traditionally spent much of our time inland in search of moose, caribou and other game. We were widely distributed in the forest inland from James Bay. Today, the community of Attawapiskat is an isolated one located at the mouth of the Attawapiskat River which drains into the James Bay. There are 2,800 members with approximately 1,300 of those members living on just 2.5 square miles of reserve. We are a member of the Mush-

kegowuk Council and of the Nishnawbe Aski Nation First Nation. However we are independent and autonomous from both and speak of our traditional territory as owners and stewards of our lands. We are the only First Nation in the far north of Ontario with a diamond mine development on our traditional territory.

Our relationship with De Beers began around 10 years ago; however De Beers has been on our land since the late 1980s. Our experience with De Beers has forced us to learn a great deal about our lands and our rights in the mining sector. The process was long and at times extremely difficult. However, we were able to enter into an impact benefit agreement with De Beers, which we negotiated with the ability to say no to future mining on our lands and receive participation and other benefits from the project. Prior to the project, other than our traditional economy, our local economy was virtually nonexistent. We have learned a lot and are still learning about mining. We do know that development can bring great success for the community and hope for our young people for the future. However, it is important to understand that the Victor project is not in and of itself sufficient to cure the perils of our community and to bring the standard of living to par with the mainstream society in Canada.

The majority of our members are living in poverty. Our community is cramped and on a little over two square miles of land and we have a significant housing crisis. Our school is contaminated and we can't drink water from our tap. Further, we are routinely evacuated from our community during break up, yet despite all this I believe we are one of the wealthiest First Nations in Canada. We still have our language, our culture and we are still able to go out on our land and to engage in our traditional aboriginal practices. We still have aboriginal title and this includes the land, the water and the minerals because we never signed on to Treaty 9. Our territory includes about two dozen identified kimberlites which may well be diamond-bearing. While those kimberlites are subject to De Beers's so-called mineral claims, De Beers has agreed with us that they cannot develop them into mines without our consent. This will require, as a precondition, the province agreeing to share a portion of its revenues with us, including Victor.

1030

In addition, the eastern portion of the territory includes the more recently discovered Ring of Fire, which contains vast mineral wealth and has spawned numerous interested inquiries from exploration companies. It is important to note that these exploration companies are not permitted to use the Victor site, which includes the airstrip and the camp, as a staging area for their exploration activities without Attawapiskat's consent.

Last month a large delegation from China expressed interest in engaging in exploration and other activities and visited our community to discuss our First Nations, our lands and our resources. We considered this to be a state visit. We plan to reciprocate that in the future.

We expect nothing less than this with Ontario—a government-to-government relationship—making me

wonder why I have to sit here and present my comments to you in less than 20 minutes, instead of in Toronto with your Premier.

I want to make clear that these bills, if passed, will not be recognized as valid laws in our territory. We hold aboriginal rights, including title, to our unceded and unsurrendered traditional territory. We have never signed on to Treaty 9 or surrendered our lands, and as such, the province has no jurisdiction over our traditional territory. We are currently working on preparing a land claim, which we'll be raising with Canada, the province of Ontario, and perhaps the courts. We are providing the following comments under these circumstances: We are not a treaty First Nation; we have aboriginal title to our unsurrendered traditional territory, which includes minerals located within; we are home to the only diamond mine in Ontario and are a party to the only impact benefit agreement in the north. We have our own consultation and accommodation policy, a policy of exploration, and we are in the process of developing a lands and resources policy.

Bill 173 has fundamental flaws, as I see it. There is no doubt that Bill 173 is an improvement and a step forward, compared to the current legislation. However, it is far from where it should be.

Overall, the Mining Act is a fundamentally flawed and outdated piece of legislation for 2009, and flies in the face of our aboriginal rights. The reason for this is that the legislation maintains a free-entry system, purporting to grant exclusive interests to minerals which we own, without our consent, consultation, or even notice.

The processes in place for the various approvals in the act are granted automatically and with no room or guidance for addressing our rights. Why bother consulting if approvals are proceeding in the event?

Environmental assessment for large-scale projects in Ontario is a regulatory mess, which includes a patchwork of assessments. There are numerous holes and regulatory vacuums, leaving the environment unprotected and unregulated.

Lastly, as I will mention later, there is no process for revenue sharing, to accommodate the impacts and allow First Nations to receive a portion of the wealth coming from their lands.

I'd like to acknowledge some of the improvements which are made: the amended purpose clause, which includes some recognition and affirmation of our rights under section 35; the requirement of future closure plans for advanced exploration and production; the requirement to submit an exploration plan and obtain an exploration permit, and to do so in accordance with the requirements for aboriginal community consultations; the requirement for land use plans in the far north; and aboriginal dispute resolution. While I appreciate the sentiment behind these provisions, I do have some questions and concerns with the specifics and how they will pan out.

Exploration plans and permits: Firstly, with respect to the exploration plans and permits, it is unclear as to which type of exploration will require a submission of a

plan or a permit. It is also unclear who is approving these plans. If the plan was for exploration in my community's traditional lands, I would hope that we would be included in that decision-making, but I see none.

It seems a lot of these questions will be answered in the regulations. This is a common theme throughout the bill. Much of the detail is left to the development of the regulations. It is crucial that First Nations are involved in the drafting of the regulations.

Aboriginal dispute resolution: The details of the aboriginal dispute resolution are also left completely to the regulations. We expect there will be First Nations representation, both in the development of the resolution's process and design, as well as in carrying out the actual hearings. It is the only way this will work. It must be driven by First Nations and reflect aboriginal values.

Land use plans: It is a step forward to require a community-based land use plan to be followed in order to develop a mine in the far north. These plans need to be our plans, not others', with only our involvement. The land use plan, if required, is to be submitted at the advanced exploration or production mining stages. This is too late. Illegal claim staking and exploration activities on existing claims are up to the point of requiring a closure plan carried out prior to the completion of any land use plans.

Also, the government has the ultimate power, with the explicit discretion under the bill, to override any land use plan and permits a new mine to be developed if it is in the economic and social interest of the province to do so. I take this as an insult. This is essentially saying that my community could prepare a land use plan, identify an area of land which, for whatever reason—whether cultural, traditional or environmental—is off limits for mining development and the government has the authority to basically say that there are economic and social interests of the province which are more important than my community's interest and proceed to permit the mine.

Revenue sharing: In April 2007, a letter of political agreement was signed between NAN, Nishnawbe Aski Nation, and the government of Ontario. In the letter, it states the parties will work to enable the aboriginal people of Nishnawbe Aski Nation First Nation to share fairly in the benefits of natural resources development, including revenue sharing, yet there is no mention of revenue sharing in the bill. This issue of revenue sharing is long overdue. I have to say I'm disappointed that the government actually thought they could present this bill without addressing this issue. Let me simplify this for you: There is a direct connection between access to resources and revenue sharing from Attawapiskat lands.

Consent: Moving on to the issue of consent, I think it was a very poor choice to exclude the requirement of First Nations consent. The 2007 United Nations Declaration on the Rights of Indigenous Peoples set minimum standards for government consultation with indigenous people; recognized indigenous land and resource rights; the rights of self-government; and the principle of free, prior and informed consent. I urge the province to take a

leadership role in the Confederation and incorporate the principle of free, prior and informed consent as an example to Canada.

The Acting Chair (Mrs. Linda Jeffrey): Chief Hall, you have a minute left.

Chief Theresa Hall: How much?

The Acting Chair (Mrs. Linda Jeffrey): About a minute.

Chief Theresa Hall: I'd like to move on to Bill 191 at this time. It is no secret what my position is, being one of the NAN First Nations and having seconded resolution 09/41 condemning the bill.

1040

The stated purpose of the bill is to provide for community-based land use planning in the far north that directly involves First Nations in the planning. We see land use plans as exercising our inherent right to self-government. Our self-government will not be subsumed by provincial legislation. While we need the province's support, we do not need the province to hold our hands through the process and unilaterally legislate how we can be involved in planning the use of our land. The legislation is essentially interfering with our government relationship with our land.

Our main concerns with the bill are as follows:

The bill purports to control First Nations autonomous land use planning not imposed on us through provincial legislation—

The Acting Chair (Mrs. Linda Jeffrey): Chief Hall, I'm sorry, but your minute—

Mr. Gilles Bisson: I'll give her my time.

The Acting Chair (Mrs. Linda Jeffrey): Okay.

Chief Theresa Hall: Sorry. Thank you.

The bill arbitrarily splits First Nations from the south, First Nations below the 58th parallel, glossing over the many past wrongs done to First Nations by projects in the south.

The bill requires 225,000 square kilometres. The First Nations' traditional territory is protected and off limits with respect to development. This was made without consultation with us or any First Nation in the far north, and means that there will be instances when a First Nation wishes to support development on their land but is barred from doing so due to it being protected land.

If the government is serious, there must be reasonable and adequate funding for us for land use plans, which is accessible to each First Nation. We've been involved in land use plans, we've picked the projects, so we know what's involved and required. The funding the government has offered to Ontario First Nations is incredibly insufficient and needs at least two more zeros added to what has been offered.

We are willing to discuss the importance of land use plans, but we must be in a process that is First Nations-driven, according to our culture and not imposed on us through provincial legislation. Let's not make the same mistake as the Indian Act and apply one system to the very diverse and distinct First Nations throughout Ontario.

As chief of Attawapiskat, it is my responsibility to ensure that these bills I have spoken about today are in the best interests of my community for today and for the future. At this point and as these bills stand, if passed, they will not be seen as valid in my community's territory. We will not accept legislation which forces development on our lands without our consent, meaningful involvement and benefit—and legislates how we are to protect and plan for our future. Meegwetch.

The Acting Chair (Mrs. Linda Jeffrey): It was Mr. Bisson's turn and he gave up his time, so one minute for each party, beginning with Mr. Brown.

Chief Theresa Hall: I'm here with Jennifer, so Jennifer can also assist me.

The Acting Chair (Mrs. Linda Jeffrey): If Jennifer is going to speak to it, she'll just need to say her name before she answers the question, okay? Mr. Brown.

Mr. Michael A. Brown: Good to see you, Chief Hall. Your community has had probably one of the most active, if not the most active, consultations and agreements with the mining industry.

We talk about land use planning and we talk about all these issues. Your experience is probably one that we all need to share amongst not just First Nations communities but all communities, including the province.

One of the things that we are grappling with is the right of each First Nation to make their own agreements about resource development, which I understand. Do you have an overarching plan? Do you think all of those in the area Bill 191 describes should have a unified vision of how this works, or should it be left to the individual First Nations?

Chief Theresa Hall: I cannot speak for other First Nations; I can only speak for Attawapiskat. We are different from the other First Nations in the fact that we have never signed on to the treaty because we were north of the Albany River. So we still maintain that our territory was never surrendered, as opposed to people who signed on to the treaty. That's how we differ.

Mr. Michael A. Brown: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier.

Mr. Randy Hillier: There are a couple of things that you mention in your presentation. First off is that Bill 173 is both insulting and also a regulatory mess. You mentioned in your presentation that you were forced to learn your rights dealing with De Beers. I'd like to ask two questions. The first is, has your community benefited significantly from De Beers being involved in your community? And with regard to revenue sharing—I think this is an important factor as well—no municipalities, no other people are getting any share of the revenue, not just aboriginal, First Nations people. Your view on the revenue sharing and your relationship with De Beers, if you could expand on that a little bit and how we could improve those things in Bill 173?

Chief Theresa Hall: Yes, we have some benefits from De Beers; that is, training and employment and businesses and—

Mr. Randy Hillier: Has employment increased significantly?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier, you've exhausted your time. Just let the chief answer the question.

Chief Theresa Hall: However, because our people are not educated and not meeting the requirements for the standard of education that De Beers requires, those people are not benefiting. With the aboriginal skills program that we were a part of along the James Bay, Attawapiskat was left upgrading their people rather than preparing for on-the-job training. So that's where we were left out on that. The agreement sounds good in principle, but in actual reality there are a lot of loopholes that we didn't foresee because we didn't have that experience first-hand. We're learning now and we're trying to give that information to other First Nations as well.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Chief Hall. We appreciate your being here today. Thank you very much.

MUSHKEGOWUK COUNCIL

The Acting Chair (Mrs. Linda Jeffrey): Committee, our next delegation was a "to be determined," and someone from this afternoon has kindly agreed to fill that gap. That's Mushkegowuk Council. Grand Chief Stan Louttit I think is here.

Mr. Gilles Bisson: Mushkegowuk: Stan, that's you.

The Acting Chair (Mrs. Linda Jeffrey): I'm sorry if I garbled it.

Chief, thank you for accommodating our schedule. We appreciate you being here today. As you make yourself comfortable: you will have 15 minutes. I'll give you a one-minute warning as you get close to the end, if you do. If you could say your name and the group that you speak for at the very beginning for Hansard, you can begin whenever you're ready.

Grand Chief Stan Louttit: Thank you to the committee for coming to what they call north, I guess.

Laughter.

Grand Chief Stan Louttit: I'll be inviting you to our territory by the time I'm finished here.

My name is Stan Louttit. I'm the elected grand chief of the members of the communities that I work with, namely Attawapiskat, Kashechewan, Fort Albany, Moose Cree, Taykwa Tagamou, Chapleau Cree and Missanabie Cree. I'm happy to be here to talk about Bills 191 and 173.

I'd like to recognize the presentation made just before me, Chief Hall—she makes a lot of good points, some of which I'll touch on as well—and as well, the presentation from Chris Metatawabin, from Fort Albany. I'm sure you heard various other chiefs in your travels, including where you came from yesterday, in Chapleau.

1050

Mushkegowuk Council, as I said, consists of seven First Nations along the western coast of James Bay, including some inland that I mentioned. Four of the Mushkegowuk communities are remote and not accessible by road, and three are further south, in the Cochrane and

Chapleau areas. All together, the lands of the Mushkegowuk encompass approximately one quarter of the province.

Before I address specific concerns about the two bills you're considering today, I want to highlight that I, as elected leader of the Mushkegowuk nation of peoples, have a direct and unique relationship to you, as elected representatives of the province of Ontario.

When Ontario was formed out of Upper Canada in 1867, the entire Mushkegowuk territory was controlled by Great Britain, in what was known then as Rupert's Land. It was several years after Confederation that Britain agreed to transfer the lands to the new nation and provinces of Canada, but first, Canada and the provinces agreed to a protection pledge, and this is the actual wording of the pledge that was written in that legal document: that "it will be our duty to make adequate provision for the protection of the Indian tribes whose interests and well-being are involved in the transfer." So when we consider these two bills, it must be in the context of the best interests of the Mushkegowuk and the other First Nations in the north. The spirit and intent of the 1869 protection pledge is as relevant today as it was then.

Our relationship to you became formalized through Treaty 9 in 1905. Our extensive memories of that agreement were that we agreed to share the land but our use of and relationship to the land would not be changed or challenged by the province of Ontario.

This has been recently validated through the discovery of the diaries of Ontario's own treaty commissioner who negotiated the treaty. You are all aware that Ontario is a signatory to Treaty 9. George MacMartin, a miner from Perth, was appointed by your government of the day to be part of that treaty. His personal diaries, which I have in my hand right here, were found—after being lost—in the archives some years ago. His context and understanding of the treaty differs from the actual wording that you may see today, and that is that our land was never given up. We are free to hunt and fish anywhere in our lands, as we have always done, as, he says in his diaries, "in the days of yore."

We have before us today two bills of the province of Ontario that need to live up to the historic relationship between us. The Mushkegowuk have been interested in land use planning for many years and have had many discussions with the province about how this could occur. In the 1990s, we began mapping our use of the land, in preparation for planning. Once a year, the Mushkegowuk hold a general assembly where the seven First Nations gather to collectively make decisions. At last year's assembly, we agreed that planning would be led by the First Nations and that the goal would be to produce one plan for the overall Mushkegowuk region that would include all of the First Nations.

The current version of Bill 191 would split the Mushkegowuk territory and only allow the participation of the northern part. The far north land is arbitrary and meaningless, and it was drawn for the administrative ease

of MNR. It cuts through ecological regions, it cuts through watersheds, it cuts through Treaty 9 and it cuts through Mushkegowuk.

The current version of Bill 173 does not provide for consent, a key requirement put forward by the First Nations in Ontario. Currently, Ontario feels that it can consult and accommodate, but at the end of the day, the resource development can or, more than likely, would occur. Consent is the key to ensuring effective and meaningful partnerships and prosperity for First Nations and the province.

A far better alternative would be to consider all the northern watershed as part of the far north. The height of land separating the rivers flowing north and those flowing south is also very close to the boundaries of Treaty 9.

The second major issue for the Mushkegowuk is that both these bills allow business as usual for claim staking and mineral exploration. The First Nations of Treaty 9 have a right to consent to or deny, as the case may be, these activities on their territories, as recognized by the United Nations and now specified by Chief Hall. The most obvious way to bring this about is by pausing new staking and exploration activities until the First Nations have had an opportunity to complete land use plans, which would outline areas where the activities could take place. Land use planning must be led by the First Nations, including the development of objectives, strategies and land use designations. These will guide how planning occurs and should not be developed by MNR. A good example is the provincial commitment or plan to 225,000 square kilometres of protected areas. Given the opportunity, the Mushkegowuk may agree to either more or less protected areas in their territories, but this cannot be imposed by the province before the planning process begins. The current thinking is strictly against the spirit and intent of Treaty 9 and more recently, the stated desire of Ontario to improve relationships with First Nations in the province.

The province of Ontario likewise should not pass the Far North Act with provisions that would allow the provincial government of the day to override plans when they feel it is in the social and economic interests of Ontario. What about the social and economic interests of the peoples of the north? We will be affected the most and should be considered first. If plans are developed and agreed to by both First Nations and the province, then it stands to reason that both parties would meet to agree to changes to the plans.

The Far North Act must also create funding mechanisms to carry out the participation of First Nations and planning. Financial support should be placed in a separate fund that will be administered jointly by the province and the First Nations. Last year, the province committed \$30 million to far north planning, but only a tiny percentage ever reached First Nations—maybe \$1 million, I think. The rest went to MNR for research projects—MNR mapping products and capacity-building for MNR.

The Far North Act must allow for the potential for greater co-operation between First Nations. For example,

Mushkegowuk First Nations have agreed to work together to produce one regional land use plan that is community-based but shares common resources and information amongst the First Nations. The bill, as it stands, makes no provision for such a scenario. We submitted a proposal to MNR several months ago to begin the process but have received no response.

Thank you for taking the time to travel this far north. As I indicated, I'd like to extend a personal invitation to the members of this committee to travel to Kashechewan First Nation and the Mushkegowuk general assembly in the last week of August. I am sure that the experience will be enlightening for all of you and give you the opportunity to better understand the challenges faced by northern First Nations.

The final point I would like to make is that the current drafts of Bill 173 and Bill 191 do not satisfy the spirit and the intent of Treaty 9, nor do they satisfy the spirit and intent of the Rupert's Land protection pledge.

The far north is unique, the far north is different, the far north is the last frontier and the far north is the home of my people. This is our land and we unequivocally state today that we will defend it unless the Ontario government agrees to the common-sense approach of consent. Think about your own backyard. A utility company comes in and wishes to dig up your backyard. You find them there; you're surprised and shocked; you're asking them what they're doing there. You'd want to know exactly what they're doing there and you'd want them to ask you.

Come and ask us before you do something. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. You've left about three minutes for everybody to ask questions, beginning with Mr. Brown.

Mr. Michael A. Brown: Thank you for coming and agreeing to take the earlier time slot. It's helpful to all of us. I will come back to the question I have asked before. First Nations have spoken to us, saying that the agreements need to be between specific First Nations and the province of Ontario. How do you see the various councils that we have, regional councils in Mushkegowuk First Nations? Is it with the individual First Nations within that council or should the council be making the overarching plan? I'm talking about land use.

1100

Grand Chief Stan Louttit: Yes. There are two things: The First Nations have to be directly involved in the actual work. It is their land, it is their authority, and they're the ones who actually do the work. If the stated First Nations—for example, in our territory, when I talked about our assembly resolution and mandate, it states that we will work together, that we'll coordinate this together. But at the end of the day, it's the communities that work on it, do it, and we kind of act in a facilitative and coordinated way.

Mr. Michael A. Brown: Thank you. That's helpful.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette. Sorry. Mr. Hillier.

Mr. Randy Hillier: Thank you very much for being here today. You've mentioned a couple of things and I'd like to ask a couple of questions in regard to your presentation. First off, you've stated that these bills are for administrative ease and against the spirit and intent of Treaty 9. I agree with you about administrative ease and how it's against the spirit and intent.

I've asked many of the delegations and the presenters if they were informed ahead of time. When Mr. McGuinty made the announcement of protecting a quarter of a million square kilometres of the north, were you notified of this imposition of an arbitrary number by the Premier beforehand?

Grand Chief Stan Louttit: The Premier did not come to us and ask for our opinion in terms of the protected areas. There was an announcement one day that there would be protected areas of 250,000 square kilometres in our territory, much to our chagrin. We were quite shocked, because we felt that with the recent developments as far as Ontario went, they had been trying to make improvements in terms of relationships—they set up a stand-alone Ministry of Aboriginal Affairs, they've gone on the record as wanting to work with us, and then making arbitrary decisions like that without talking to us was very, very shocking.

Mr. Randy Hillier: I've heard the same thing about Bill 173. I think some of the presenters used the term "spoon-fed and predetermined questions," no real meaningful discussion or debate. What's your view about the discussions on Bill 173 and your involvement and participation?

Grand Chief Stan Louttit: We have been involved right from the outset—not in our terms of what we desired to be consultation. Ontario has attempted to have discussions by bringing people together in urban centres and thereby calling it consultation, I suppose. We've told the province from day one that it is the people in our home communities who need to have the discussion and need to have input into the process. That has fallen on deaf ears.

At the end of the day, unfortunately, it has to do with dollars and having the ability to be able to visit the 40-plus First Nations as opposed to having five meetings with some First Nations. At the end of the day, the dollar speaks, which is very, very unfortunate. We feel that we have not been fully consulted, as we have put forward to the Premier and to the various ministers right from day one—and that is for that discussion to take place right in the community.

Mr. Randy Hillier: Just one last question—

The Acting Chair (Mrs. Linda Jeffrey): It had better be quick. There are 12 seconds.

Mr. Randy Hillier: —from the earlier presentation about the First Nations communities not receiving the full benefit of this economic development, and it was with regard to education. Have there been any discussions surrounding these bills to really amplify that benefit of development for the First Nations community and how to possibly include it in the bills or any of that discussion?

Grand Chief Stan Louttit: As Chief Hall stated, revenue sharing is a key, and it has to be recognized by the province. Right now we're basically left to ourselves to sit down and negotiate with a resource developer on whether they wish to partake in some kind of an agreement. Sometimes it's good, sometimes it's bad, but I think at the end of the day, Ontario has to come forward and put some kind of revenue-sharing requirement so that we don't have to fight tooth and nail with resource developers in terms of benefits.

Mr. Randy Hillier: Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Bisson?

Mr. Gilles Bisson: Just in regard to your comments that this committee has not gone into communities in the far north, I couldn't agree with you more. I think there's more to be learned by us as legislators as to what needs to happen by not only listening to you as an elected chief—that's fine and good, but the community members, at the end of the day, are where you derive your power and your wisdom. So not going there is a real problem, and the committee needs to understand that it puts the elected leaders in a heck of a position because they can do nothing without the consent of their communities. It's unlike our system, where we make all the decisions and everybody follows us. Their system is much more consensual, and this is representing, I think, a big problem in the process to get the land use planning.

So with all of this being said, I guess what you're saying is that this process isn't really legitimate—the long and the short? Comments?

Grand Chief Stan Louttit: Exactly. I have it written here, and I didn't say it. I'm glad you brought it up, Gilles. I was going to question the merit of this committee: Will it do any good? I have apprehensions. I have questions.

At the end of the day, if the acts go through, will the things that have been most commonly heard and the various positions put forward by people, not only us as leaders—will it be heard and will it change things? Or is there, as we feel a lot of times, some preconceived notion by Ontario that in fact these things are already there; they're drafted by your technicians and you're going through this process for public perception—for the public good, but at the end of the day, what good does it do? So I have concerns. And if, in fact, we are heard and there are legitimate changes based on our cries for help and input, then we will be satisfied, but right now I have questions.

Mr. Gilles Bisson: So as I understand it, clearly, Mushkegowuk has been in the forefront of land use planning. You've done quite a bit of work, as I well know. I guess what you're saying to us is, "Take a step back. This has to be community-driven," and at the end of the day you accept the premise of land use planning. You want to have development, but you want to have a say about how that's going to happen.

One of the things that's key in all of this is the issue of consent. I've raised it with a few other people before. In

many cases, if it's anything from a strip mall to the building of a new factory or a mine in a community, a municipality under the Municipal Act has the right to be able to determine what kind of development happens in their municipality. If that's not in here, what's the point?

Your comment?

Grand Chief Stan Louttit: Exactly. The point we're making, and I've said it here, is that resource developers and the province and government can consult with what they deem to be consultation until they're blue in the face, and they can accommodate us and accommodate certain things. I suppose that's fine, but at the end of the day, there has to be consent. And it's not a scary word. I told this to Mr. Duguid in a meeting similar to this: "Don't be intimidated by consent."

All we're asking is, in our territory, we want to be able to have a say: "Yes, that can happen there," or "No, it cannot happen there. Maybe it can happen over there, or maybe over there." That's why it's important to have land use plans so that we'll be in a position to be able to identify where our people are buried, where our animals are, where our plants are and where all of these things are, so at the end of the day, we can sit down across from resource development people, across from the government and say, "You know what? We agree. That area would be good. We want to prosper. We want to have a good decent living, and that area is prime and there's potential. But in that area, some of our people are buried there. In that area, the moose and caribou migrate and live there, and we count on them."

That's the kind of thing that we need to do, and I think you've got to understand our picture before this goes any further.

Mr. Gilles Bisson: Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much. Thank you for being here today and thank you for accommodating our schedule. I appreciate it.

Grand Chief Stan Louttit: Thank you. Meegwetch.

DE BEERS CANADA

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is De Beers Canada, Mr. Jim Gowans and Mr. Tom Ormsby.

Welcome, gentlemen, and as you get yourselves seated, I'll go through my preamble. If you're both going to speak, if you could state your names before you speak for the record so that Hansard gets an accurate record of who's here. After you've introduced yourself—

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): Gentlemen, if you could hold it down a little bit, I'd appreciate it.

1110

You'll have 15 minutes once you've begun—after you've introduced yourself. I'll give you a one-minute warning if you get close to the end. There'll be time for questions afterwards. Welcome.

Mr. Jim Gowans: Good morning. My name is Jim Gowans, and I'm president and CEO of De Beers

Canada. Joining me today is Tom Ormsby, our director of external communications—corporate affairs—for De Beers Canada, and he's a member of the Victor senior management team.

I'd like to acknowledge Madam Chairman and the committee members here for providing us the opportunity to present our comments and recommendations regarding proposed revisions to the Mining Act, or Bill 173, and the Far North Act, or Bill 191.

De Beers Canada is appearing before this committee today and is also providing a written submission to the committee on Bills 173 and 191 to expand upon our concerns and recommendations outlined in this presentation. We'd also be pleased to take any questions that committee members have at the end of this presentation.

We are participating in this process as we believe our lengthy experience in Ontario's far north will assist the committee and others to a better understanding of the challenges of working in this area and of how to turn these challenges into opportunities for our industry, First Nations and the people of Ontario. We support the intent of the bills, but we do have concerns in a number of areas that we would like to highlight today.

De Beers Canada is the owner and operator of the Victor mine, which is located in Ontario's far north in the traditional lands of the Attawapiskat First Nations. It is the first and only diamond mine in the history of Ontario. We began exploration in Ontario's far north about 50 years ago. A lot of people don't know that, but we've been here for a long time. The diamond-bearing kimberlites that are now known as the Victor mine were discovered in about 1987-88—more than 20 years ago. Members of the Attawapiskat First Nation and other local First Nations communities have worked with us over that time. Our Victor mine officially opened last year, more than 20 years after the discovery of these original kimberlites.

In this map, you can see that it shows where—it's a bit of artistic licence, I'll admit, but it gives you a general idea. Most southerners wouldn't know the difference anyway. There is no year-round access in this area in Canada's far north, and the cost to operate this mine in this area is quite expensive—no permanent road, and we're about 300 kilometres from the nearest rail line at Moosonee. Weather permitting, there is about a 300-kilometre community seasonal winter road that averages about 35 days a year to transport our fuel, supplies, parts and heavy equipment. We contribute several millions of dollars to the construction and maintenance of this community road every year.

We also build and maintain about another 100 kilometres of seasonal road, entirely at our own expense, from Attawapiskat to the mine site. The planning and execution of this program is year-round, and it costs us in the millions of dollars as well. Everything else must be flown into the mine, including our employees, contractors, equipment that cannot risk travel on these roads or in extreme cold weather, emergency parts and critical spares, our training consultants and, of course, food.

I'll give you an idea of some of the costs incurred: advanced exploration feasibility studies for the Victor mine were approximately \$130 million. Development of a diamond mine is extremely expensive because of the nature of doing the sampling. Our permitting, our community consultation and construction of our mine were a little over \$1 billion.

Just to give you an idea of the contribution, the direct and indirect economic benefits of the Victor mine have been and continue to be quite substantial—a \$6.7-billion impact on the GDP of Ontario and a \$4.2-billion impact on the GDP of northern Ontario. These were taken from a study done in January 2004. Currently, over \$10 million in direct payments to the First Nations that we have IBAs with have been done to date, and about \$167 million in construction contracts have been awarded to First Nations joint-venture companies, and about \$90 million in operations contracts awarded to the First Nations joint ventures to date. In addition, over 900 positions—part-time and full-time—during construction were filled by First Nations community members. Over 80% of our construction workforce came from northern Ontario, of which about 85% of our current workforce is from northern Ontario and about 40% are First Nation members.

We'd like to highlight this information to demonstrate the tremendous effort, time and cost required to bring the development of property into commercial and sustainable production. De Beers Canada understands the need to refresh and modernize our legislation to ensure it reflects the interests of the people of the province, and we believe that these two bills together may introduce additional layers of uncertainty, bureaucracy and financial burden on an industry considering or already operating in our far north.

Specifically on Bill 173 we'd like to highlight some of the following:

Let's talk about the duty to consult. The language in our proposed bill appears contradictory to the consistent rulings of the court that the duty to consult with First Nations lies with the crown. As the bill currently reads, it appears that the government may be downloading this legal responsibility to the industry and private citizens. If so, it may actually lead to additional challenges in the courts, especially where disputes may arise between parties rendering some of the proposed dispute process references ineffective. We would recommend greater clarity on the complete definitions of "consult" and "consultation" used throughout this bill before drafting of the regulations. We further recommend that the government clarify its own role on the consultation process before the drafting of the regulations. We recommend that the government clarify the taxable benefits regarding the additional consultation requirements before the drafting of the same regulations.

Let's talk about exploration permits and planning. In Bill 173, new steps have been added regarding the exploration plans and exploration permit applications related requirements, including aboriginal community consultation. These are to be submitted to a director of

exploration who will then decide whether or not to issue the permit. In the proposed act, the director has the authority to impose any additional terms he or she deems appropriate. There's no clarity regarding the definition of what comprises an exploration plan, the definition of community consultation for an exploration plan, the expected administrative timelines of these additional steps in our process and whether or not the additional time to achieve the above steps will be added to the time frame to work or to maintain a mining claim, which I think is critically important. There's no clarity regarding the ability to appeal any additional term imposed by this director of exploration. This is the far north, where most exploration work is seasonal, so if you lose a season, you lose the whole year. We recommend greater clarity on the above before the drafting of these regulations.

Let's talk about the opening of new mines in the far north. Under the current wording of Bill 173, it can be interpreted that mining companies may be able to complete all the work and investment regarding exploration, discovery, permitting and construction of a new mine that cannot open the doors without an improved community-based land use plan in place. We understand that interim arrangements, agreements and/or MOUs may be put in place in the absence of a formal community-based land use plan. While somewhat of a comfort, industry requires certainty in order to justify the significant investments required to find, assess, develop and open a mine. We recommend greater clarity on what constitutes an acceptable interim agreement in the absence of these formal land use plans before the drafting of the regulations.

I want to move on to Bill 191. As I stated in our opening, we will provide greater details of our concerns in our written submission but I'd like to just address a couple of these now. As companion legislation to Bill 173, Bill 191 has a tremendous impact on all phases of mining in Ontario's far north.

1120

De Beers Canada recognizes the need to protect and enhance our environment. We are proud that our operations are ISO 14,000-certified, an international recognition of high standards we maintain regarding our environmental management systems. We are also proud of the fact that we have achieved this same certification for our entire construction phase, which was a first in Canada.

De Beers Canada also recognizes the importance of working together with our First Nations partners. At the Victor mine, we signed impact benefit agreements with four First Nations communities, as well as a working agreement with a fifth First Nations community. We also develop agreements related to certain exploration activities. These agreements outline local benefits, in the form of direct or indirect compensation for use and for potential impacts on the traditional lands of these communities that may result from the construction, operation or closure of a mine. Key areas include environmental management, employment, business opportunities, skills training of the community members, social investment

and other benefits that can be developed in co-operation with communities. Reaching such agreements takes time and requires a substantial financial investment for proper community engagement to ensure that the concerns of each community have been heard. The Attawapiskat First Nation IBA, signed in November 2005, took three and half years to negotiate. There were over 100 community meetings as part of that consultation process. Our most recent IBA with Fort Albany and Kashechewan First Nations took more than five years to complete. We are currently more than two years into discussions with one community regarding additional exploration work.

We believe Bill 191, in its current form, brings forward a number of concerns and introduces greater uncertainty for companies currently operating or looking to operate in Ontario's far north. We require more clarity in a number of areas, especially in the area of community-based land use plans, which are the main focus of this legislation.

We believe the bill needs to demonstrate more balance regarding economic development of the far north. Although the word "balance" is used in the proposed legislation, Bill 191 does not appear to ensure that economic development opportunities will be guaranteed.

To meet the allotted time for today's presentation, we'd like to highlight the following concerns we have about this bill in its current form.

Let's talk about the land use plans. As we meet here today, there are 33 First Nations communities in the area of undertaking in Ontario's far north. Of those 33 communities, only one has a formal land use plan, and it's our understanding that it took nearly 10 years for that community to complete this. Since Bill 191 states that no new mines will open without a community-based land use plan in place that supports the operation of a mine, the attractiveness of investing in Ontario's far north becomes diminished immediately. The possibility that companies will need to wait up to 10 years for the remaining 32 communities to develop formal land use plans for approval is a huge disincentive to invest, with no guarantee that approval will be granted. We recommend clarity regarding the interim process that communities can use to approve the development of a mine in the absence of one of these formal land use plans.

There's also no definition of what a community-based land use plan is. There are no apparent formal processes or timelines in place regarding final sign-off of a community-based land use plan once completed by a community. Clarity is required on the exact boundary of the area of undertaking to ensure that companies understand where Bill 191 will be applied. We recommend greater clarity on these areas.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Gowans, you have about a minute and a half left.

Mr. Jim Gowans: Okay.

Other clarification is required concerning these plans. How will disputes between First Nations communities regarding the ownership of traditional plans be resolved, and what are the processes and expected timelines to

resolve these? Will the tribal or regional councils have any standing regarding the submission of these plans to their membership area, and if so, to what extent? What is the government's position if more than 50% of the far north is designated for the development of First Nations communities? Will the government reject these plans? Will there be a process to amend the formerly approved plans should the community wish to do so?

Bill 191 sets out to protect at least 50% of the area of the undertaking; however, there are no specific details on how this is going to be achieved other than that it will not permit mines or other industrial development. Will it be the first 50% total that's submitted? Each community expected to protect at least 50%? How will these areas be connected? Where's the flexibility going to be in this? And how are we going to share access corridors to all regions of the north? We strongly recommend that the government provide clarity on these concerns.

In terms of the balance, we do not believe it provides balance to provide certainty and stimulate interest in investing in the far north. At least 50% of the area is to be protected from development. That percentage appears to have no limit under the bill in its current form, and we are unaware of government plans to provide support for the infrastructure, such as hydro corridors and permanent roads.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Gowans, your time has expired. Maybe you can get to some of your other points in the answers to the questions that committee members will have for you.

Beginning with Mr. Ouellette, you have about two minutes per party.

Mr. Jerry J. Ouellette: Thank you for your presentation and thank you for investing in the province of Ontario. Some of the things you've laid out—you've paid several million dollars in winter roads. I assume that you're not the only entity utilizing those winter roads.

Mr. Jim Gowans: No, the communities along the coast are also utilizing the roads.

Mr. Jerry J. Ouellette: You mentioned the \$130 million that you initiated the program with; over \$1 billion to get the operation up and running; the \$10 million that is paid out in negotiations; also the \$167 million in construction contracts; and the other \$90 million, and the list seems to go on. Essentially, once the mine is fully operational and running, any idea what the taxes on an annual basis would be? Just approximately.

Mr. Jim Gowans: I don't know what the taxes on an annual basis are, Jerry. If I look at the life of a mine, and given the current economic circumstances, both in our foreign exchange and the collapse of diamond prices, we're probably estimating that, until the end of the mine in the next 10 years, we're looking at somewhere between \$20 million and \$35 million in royalties, and we're looking at somewhere between \$50 million and a hundred-and-something million dollars in provincial taxes.

Mr. Jerry J. Ouellette: So \$50 million to \$100 million. I think some of the difficulty is that we hear on a

regular basis about revenue sharing. The difficulty is the definition of revenue sharing. From, possibly, a southern perspective, the amount that you contribute back into the economy that goes back to the crown or the multiple users is the entity that should be initializing and, possibly, in my belief, is the revenue that gets shared with the other communities that are out there. Do you have any idea what, of the millions and millions that you pay out, would actually transpire from the crown—that you pay to the crown—actually goes to the First Nations that are in those areas?

Mr. Jim Gowans: I don't exactly, although we have some joint investments like training facilities, so that comes back both from our investments as well as provincial and federal government investments; that's money that comes back. In terms of the other ones, I'm not too sure what comes back. If you look at who's got the biggest benefits and you look at all those plans right now, we're still in a loss position until we pay off our billion dollars. At current prices, that's going to take several years, in excess of probably five to seven years. First Nations communities have gotten their money right up front and they continue to get employment opportunities, and northern contractors, so in terms of if I looked at the best benefits, I would say those are a few. Then, the government right now, the only benefits they're getting are income taxes from the employees.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: First of all, I think it's a bit of a lost opportunity on the part of this committee not to have had more time for players such as yourself and others who are here today, because you're the only company other than, I guess, Goldcorp to be in a position to actually have gone out and developed in the far north and done impact benefit agreements and gone through the process. I think there's a lot to be learned, because I know from my involvement it was extremely difficult for all parties. So just from my perspective, I think it's too bad that we didn't take more time to consult.

I want to get to the issue of consent with you. You, as a company, early on said, "We are not developing, we're not going to do anything when it comes to extraction of diamonds in that area until we get consent from the First Nations"—without their approval. This bill doesn't deal with that issue. It doesn't in any way give the First Nations communities any kind of comfort when it comes to the ability to decide what will or will not happen on their territory. Should it be included, considering your experiences?

1130

Mr. Jim Gowans: It continues to be our policy. I think that aspect has to be involved in the planning. I would argue that that was probably one of the original intentions of changes in the Mining Act.

Having said that, I also would recognize that that is a huge frustration because I think De Beers Canada does a pretty good job. We're not perfect, but we certainly go well out of our way to ensure as much consultation with the First Nations communities as we can in terms of

exploration and stuff like that. It's very frustrating to know that we won't go into an area until we have those dialogues and consent when we lose opportunities because of the nature of the business.

Mr. Gilles Bisson: The Far North Act deals with—

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Sorry, Mr. Bisson. You've run out of time.

Mr. Gilles Bisson: Can I ask the government for just two seconds to ask a question, because it's relevant?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Brown is agreeing, so yes.

Mr. Gilles Bisson: The act takes the premise of protecting a defined percentage of land. Would we not be better off as far as providing clarity to actually work on rules of development and protection? Rather than just saying, "50%," we just say, "Here are the goals that we want at the end: protection of the environment, economic etc.?"

Mr. Jim Gowans: I think the whole idea behind 50% has to be that it has to be extremely flexible. Even the land use plans have to be flexible, because I don't think that people today know what the true potential of the land is. Even 20 years ago, we didn't know that there were kimberlite pipes in northern Ontario, and now we have our first diamond mine.

So I think, at the end of the day, if you have 50% set aside for carbon capture and other aspects, then you're fine, but it has to be flexible and you have to be able to move that around. If you try to lock in on specific blocks, I think this destroys the intent of this legislation.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Brown, your remaining time is a minute if you want to squeeze a question in.

Mr. Gilles Bisson: I would agree to it if you extend his time.

The Acting Chair (Mrs. Linda Jeffrey): That's nice. I'm not allowing that.

Mr. Gilles Bisson: I move a motion in order to extend the time of the government.

The Acting Chair (Mrs. Linda Jeffrey): All right. Two minutes, then, if you want.

Mr. Michael A. Brown: My question revolves around the consultations with the First Nations. You pointed out in the presentation that you had consultations and agreements with four and now five First Nations. Can you tell us a little bit about how that evolved in terms of who you negotiated with and how you consulted with them? Had you already decided there were four First Nations and then a fifth one came aboard, or how did that work?

Mr. Jim Gowans: It was kind of an interim process, I would admit. Obviously, the Attawapiskat was a key one, but we knew that we would have impacts on the other communities along the James Bay coast, and so we entered into discussions with them. Of course, as we went along and the closer the mine got developed, that dialogue started to strengthen up into forming into a benefits agreement.

Four of the ones that are not far away from that, it was just to have in a working agreement. The fifth one, it's because they're more remote, but we have impacts, so we did that.

Mr. Michael A. Brown: Okay, thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today. We appreciate it.

CHARLES FICNER

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Charles Ficner. Is he here? Is Mr. Ficner here? Okay, great. That's you? Thank you. Welcome.

Mr. Charles Ficner: I'm sorry. If you could just bear with me for one—

The Acting Chair (Mrs. Linda Jeffrey): It's okay. I understand there are some technical challenges, but I will just go through my preamble and remind you that you'll have 15 minutes. I will give you a one-minute warning if you get too close. There will be questions at the end by our members, and when you're ready to begin, if you could state your name for Hansard. I understand you're an individual; you're not speaking for any organization. If you could just state your name before you begin, you'll have 15 minutes.

Mr. Charles Ficner: My name is Charles Ficner. I am here because the Mining Act impacts on citizens. Members of Parliament have—

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ficner, could you just hold for a second? If anybody wants to have a conversation at the back of the room, could you please take it outside? It's being picked up by the microphones. Please. I'd appreciate it.

Thank you, Mr. Ficner.

Mr. Charles Ficner: I'm here as an individual who has been affected by the Mining Act and who knows what damage can be done through the Mining Act. Since members of Parliament are very much those who are in charge of setting the laws of this land, I think it's vital that you know the implications of the bill and of the act.

This bill has resulted in the extortion of property from citizens; it denies equal treatment; and it's necessary for this Parliament to reverse the theft.

Only Parliament makes laws. We live in a society that lives under the rule of law, and that means Parliament sets the laws. Much harm is done under this bill in the name of Parliament. It needs to be changed.

In 1913, Parliament said, "We will avoid conflicts between mining companies and landowners by making sure that all of the minerals under private land are owned by the landowners." It gave all of the minerals retroactively, 100%, and it said, "All land sold from here on will also include the minerals, unless it is expressly prohibited in the deed." The effect was that everyone owned the minerals.

Bureaucrats, however, don't recognize this. Here are some formal statements written by bureaucrats. "They are moving to tax properties, to take it away from citi-

zens.” “The tax is intended to take property from citizens.” “No compensation is made.” “The crown does not benefit.” Instead, the crown takes the confiscated property and gives it to private companies for their private benefit. Explicit statements from senior government officials.

Interjection.

Mr. Charles Ficner: Could you hold? I’ll run through them—

Interjection.

Mr. Charles Ficner: It’s very clear: The policy has been pursued vigorously. The policy effectively says, “We will use the taxation powers of government to extort property from citizens and give it to mining companies.” Officials have acted as a “heavy” for the mining industry.

As a consequence, they have managed to claw back 1.4% of the minerals under private land. Eighty-seven per cent of the land in the province is crown land. Of the other 13%, 1.4% of that has been clawed back, and it’s clawed back by the levying of the tax.

Officials have pursued this policy for years, and they have transmitted the intent of this policy effectively to ministers. In 1991, I was told by Gilles Pouliot what it says on this slide: “Unless we take the property away from Arizona widows, Ontario will not prosper and mines will not develop.” That is not the intent of Parliament. It is not the intent clearly expressed in 1913.

What bureaucrats do is they impose an additional tax, now called the mining lands tax, on a very small percentage of private lands. In my own case, that tax is now two and a half times as great as the municipal and school taxes combined. It applies to half of my land, and the purpose is to cause me to give my property to the government for nothing so it can give it to mining companies for nothing: blunt and plain. That’s what officials are doing under this act.

I do not believe—I know—that Parliament never gave that authorization. I cannot believe that this Parliament would ever agree to use taxation powers to steal property from citizens so as to give it to mining firms.

Where the tax was authorized—and there is a tax—was on lands that were granted that would not otherwise have been granted by the crown: on lands in unorganized territories not intended for settlement. Mining companies said, “We want to develop that,” and the crown said, “Yes, you can have it.” In 1907, the government said, “Okay, we’re going to start taxing those properties.” It imposed, under the Supplementary Revenue Act, a tax on those lands. They were not subject to municipal taxation.

That act also said that we will tax those minerals that are owned by a different person than the person who owns the mining rights. There’s a sample of the provisions in 1907: on a mining location—defined in the act; mining claim—defined in the act; and if you didn’t mine them, they reverted to the crown—it was clear in the title; and on minerals owned by any person other than the person owning the surface rights.

In 1946, essentially the same; in 1955 and on—minerals are dealt with separately from the surface. Very

clear: It didn’t apply to lands that were not severed; it did not apply to lands in municipalities; it didn’t apply to properties that were not mining locations and mining claims.

But bureaucrats apply the tax on a lot of properties, including properties that were not subject to the tax. There is no doubt about this. In 1989, as they proceeded with the last major amendment to this act, they boasted: “In the past 20 years, 400,000 acres were reverted to the crown.”

1140

Officials have built other very interesting provisions into the act too. They get Parliament to approve interesting clauses. If you don’t pay the tax, the bureaucrats have the minister sign a certificate of forfeiture, and here’s what subsection 197(5) of the act currently says: “... absolute and conclusive evidence of the forfeiture to the crown” and cannot be challenged in the “court by reason of the omission of any act or thing leading up to the forfeiture.” If bureaucrats don’t do what the law requires, it’s still going to be taken, and no citizen can take the government back to court. That’s what the laws of the Parliament of Ontario say. It’s really threatening and intimidating, and I can’t believe that any member of Parliament ever understood what that provision meant.

In 1989, it’s very clear, officials knew they had been illegally taxing properties and they tried to sneak a clever change into the act by changing the name of the tax from the acreage tax—we were moving away from imperial to metric—to the mining lands tax. But they also changed the definition of “mining rights,” which had a very sneaky effect. However, making that change was not sufficient to make the act allow the tax on other properties because Parliament sets our laws and our laws are determined in the courts by the intent of Parliament. What was the intent? It was clear, as the explanatory notes say, that all references to the acreage tax will be changed and the rates will be prescribed by regulation. Simply, there were two purposes in changing that part of the act in 1989: to allow the tax rate to be set by regulation and to change the name of the tax, not to levy the tax on any other properties. That was Parliament’s intent. Sean Conway, the minister under whom the bill was drafted, not the minister who introduced it, made that very clear: “... not the intention of the Liberal government.” It would be “a violation of the principles of fairness and justice ... intended”—Sean Conway, absolute and clear. But officials apply the tax nonetheless.

I think it’s a very interesting statement. “Up until 1955, and after 1991, it was the intention of the Legislature that it was legal”—a senior official in the ministry. “When talking about the provisions in the act, the legislators didn’t reflect their intent properly in the legislation.” What? An official can decide what the intent of legislators is, and it’s not reflected properly in the legislation?

It ignores the statutory provisions, it’s opposed by the explanatory notes, and it’s contradicted by this statement of a government minister under whom the bill was developed. But officials did levy the tax.

The top statement, again, is actually very interesting because there's a clear acknowledgement in that top statement that the Legislature didn't intend to tax between 1955 and 1991, but it did tax. The ministry did tax and it did confiscate properties for non-payment of the tax during that period. As a result of that confiscation, some properties were brought back to the crown that didn't belong to the crown and that the crown had no legal right to. That's part of the 1.4% of the private land. A very senior person in the political office of the minister makes it very clear: "There's an agreement, in principle, that you were not taxed correctly." And look at the second statement: "I might be more cynical than you, Mr. Ficner. What I see as the most likely explanation is the reflexive self-interest of organizations." They're "very uncomfortable with admitting that they have been wrong ... they don't want you to be the thin edge of the wedge." What does that say? "We're going to continue to tax. We're going to cover it up. We're not going to do what the Legislature said."

The consequence is that some of this land, some of the minerals were confiscated. It's part of that 1.4% and it's time for the Legislature to put it right to avoid the misleading by bureaucrats. But bureaucrats are determined. I've been at this for 20 years. This has consumed 20 years of my life. It has been a real hell; it's been abuse.

They broke the law again. I went to the Legislature: "What is your intent?" I helped draft a bill—legislative drafting staff. My member introduced it in 1991. Then, bureaucrats had a minister sign the letter that broke the privacy laws, that misused private information about me and said, "Ignore this guy. Just brush him off." And it didn't get done.

A minister recently confirmed that his ministry and another would each provide me with \$5,000 on the condition that I agree that my complaint that they broke the law has been addressed. "Officer, I'll give you \$100 if you agree that your complaint that I was speeding has been addressed." I raised this concern with the Attorney General, I raised it with the Premier. I got nowhere; I got stonewalled.

Early on, the senior lawyer from the ministry said that he would do everything in his power to ensure that the government didn't lose. What does the senior staffer say, again, in the minister's office? "It has nothing to do with ill will toward you. It has everything to do with the fact that they're trying to limit their liability; they're embarrassed. They would rather give you money and not admit it than admit it, even if it's going to cost less money to admit it." This does not look good to me. This does not look to me like what I think the Legislature, which upholds the rule of law, wants bureaucrats and officials to do.

What does the minister say? This is relating to this bill. I say, "Fix it. You broke the law. Repay the taxes. Stop taxing me. Don't tax me ever. You're not allowed." He says if the bill becomes law, I'll be able to apply to him, and upon successful application to him, he might stop taxing me and then my son and I will not be subject

to the tax that is not legally applicable in the first place. What kind of abuse is this? Is this what this Parliament intends?

What else does he say? "At my instruction, my chief of staff has twice attempted to engage you on the topic of compensation." I've made it clear: Yes, you've done immense damage to me over the last 20 years, it has cost me a lot of time, it has cost me a lot of harm, it has cost me a lot of money, but I want you to respect the law. That's what I expect of my government. I expect you to do what Parliament set out. But their concern is with how much money I want. In the bill, I can go to the minister and beg on bended knee, "Please don't tax me," and if I behave nicely, then he might not tax me. That's not protection of the law; that's arbitrary issues.

Again, a senior staffer in the political office: "You've been very fair. I appreciate that, because it would be quite understandable for you to conclude that we're just the same bunch of liars and crooks as the previous bunch"—pretty clear. But what's happening to me here?

This has broad implications. It has implications for the 1.4% of minerals that have been confiscated by the crown. That's 1.4%; it's trivial. In the south, what does the minister say? "Well, we're going to exempt it from mining companies going on it." But it's not going to return it to the landowners. It's not going to do what the Legislature said it intended in 1913, and it's not going to do what the Legislature confirmed in 1997 it would do with the minerals it owned under the Canada Company's Lands Act: It gave them back to the owner.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ficner, you have just over a minute left.

Mr. Charles Ficner: Thank you.

So, what's the solution? Change the bill. Stop the inequitable taxation. Give back the land, the minerals under that small percentage of private land. Treat them the same as the 98.6% of property owners in the south and the 99.6% of property owners in the north. Don't discriminate. Respect the charter. Stop applying the confiscatory tax. Make the act clear. Remove any ambiguity. Make it impossible for bureaucrats to go around implementing a policy that they invent to use the taxation powers of government to take property from citizens so as to give it to mining companies for nothing.

Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, you have about a minute and 30.

Mr. Gilles Bisson: I'm going to try.

I want to understand this: Your argument is that if you own mining rights, you shouldn't pay tax. Is that what the argument is?

Mr. Charles Ficner: My argument is, I own a 200-acre lot—and I came to know this in a very interesting way. I own the minerals under my land. I own it under both halves of my land. Under one half of my land, I pay no tax to the province. I pay municipal tax, like everyone else, but I pay no tax to the province. On the other half—

Mr. Gilles Bisson: I need to understand, do you have mineral rights under both halves?

1150

Mr. Charles Ficner: Yes, absolutely.

Mr. Gilles Bisson: All right. Carry on.

Mr. Charles Ficner: So under the one half, they have been levying the tax in a way that the act makes absolutely clear they have no right to do. They've even admitted that they had no right to do it—"Yeah, we're going to refund the tax"—in that time period. Yes, there is a very, very small percentage of private landowners, of that 98.6% of them who own the minerals, who are forced to pay this tax.

Mr. Gilles Bisson: Why do you pay tax on one half and not the other?

Mr. Charles Ficner: That's a very good question: Because the bureaucrats arbitrarily decided to do it against the law.

Mr. Gilles Bisson: Maybe the parliamentary assistant can clarify for me.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Brown.

Mr. Michael A. Brown: I can't. I'm not clear, as you are not, why one half of the land would pay mining tax and the other half would not. We can undertake to see if we can discover that, but off the top, I don't know.

The Acting Chair (Mrs. Linda Jeffrey): Any further questions, Mr. Brown? No? Mr. Hillier.

Mr. Gilles Bisson: I move that we give Mr. Hillier extra time because he'll decipher this for me.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, I'm not going to be entertaining any more of those motions.

Mr. Randy Hillier: May I go along? I might add some clarification there.

The Acting Chair (Mrs. Linda Jeffrey): Go ahead. You have a minute and a half.

Mr. Randy Hillier: Mr. Ficner, you've mentioned in a number of your slides—obviously, I'm not going to be afforded time to have some clarification on this—senior government officials using phrases like, "We're just the same bunch of liars and crooks" and a host of different—do you have the names of those senior government officials?

Mr. Charles Ficner: There are two officials. The one in the minister's office is Eric McGoey, he's the minister's chief of staff; and the senior bureaucrat is Kevin Costante, the Deputy Minister of Northern Development and Mines.

Mr. Randy Hillier: Right. Okay. And do we know how many people are affected—I think this is one clarification that we should do: 1.4% of private lands, where the mineral rights are not held by the surface owner, have indeed reverted to the crown in many cases under the illegal levy of a mineral tax where there is no mining operation.

Mr. Charles Ficner: They did refer for the non-payment of the tax, yes. The percentage that was illegally levied I can't precisely say. But what I can say is, there is still a small percentage that is being subject to the tax, and that small percentage is extremely small. Those citizens who have tried—myself—to get it resolved—

I've been offered all sorts of deals if I keep my mouth shut.

Mr. Randy Hillier: The last comment: You said, from the minister, you've been offered money, but not to change the law, not to actually abide by the law—just take some money and don't say anything? Is that—

Mr. Charles Ficner: Well, you can see the comments. The minister's comments—you have a copy of the presentation—are pretty clear. "We're concerned about dealing with the compensation." I have a whole stack of documentation, let me assure you. Twenty years has taken a lot of my life in this.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier, you can't ask any more questions. I'll let Mr. Ficner finish your answer.

Mr. Charles Ficner: I think I've said enough. What I want this committee to do is to recognize that this process, the subjecting of citizens to that tax, which generates about \$2 million of revenue across the whole province, a trivial amount, causes immense damage and harm. Stop doing it. If the properties are subject to municipal tax, don't tax them this additional provincial tax. It's dead easy.

With respect to the 1.4% that you have confiscated from the surface owners and that the crown owns, just give it back. It's dead easy. It doesn't cost the government or the parliament a cent and it ensures that every citizen is treated absolutely equally under the law—that they can have the protections guaranteed in their deed for the quiet possession of their property for their sole and only use forever, not subject to the potential of being taxed exorbitantly or forced to suffer a mining company at some future date coming on to their land. The bill says that you will not allow the mining companies to go onto that land any longer. Why not do the full measure? Give the minerals back.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Ficner. We appreciate it.

CPAWS WILDLANDS LEAGUE

The Acting Chair (Mrs. Linda Jeffrey): Our last delegation this morning is CPAWS Wildlands League, Janet Sumner and Anna Baggio. Have I pronounced that right? Baggio, is that right?

Ms. Anna Baggio: That's good, close enough.

The Acting Chair (Mrs. Linda Jeffrey): Close enough. Okay. Good morning and welcome. I know you were here earlier this morning but I will go through my preamble. If you're both going to speak, if you could state your name and the organization you speak for before you begin. You'll have 15 minutes; I will give you a one-minute warning if you get that close to the time. Whenever you're ready to begin, you have 15 minutes, and we'll be asking questions afterwards.

Ms. Janet Sumner: Thank you, Chair and committee members, for the opportunity to speak before you about Bill 173 and Bill 191. My name is Janet Sumner and I am the executive director of CPAWS Wildlands League.

Today, I am accompanied by Anna Baggio, Wildlands League director of conservation and land use planning.

Wildlands League is a leading not-for-profit environmental organization in Ontario. We combine credible science and visionary solutions to save, protect and enhance Ontario's wilderness areas. As a solutions group, we have a long history of working in partnership with industry, government, First Nations and citizens. For example, we have relationships with over 15 First Nations in the far north. We are honoured to have a good relationship with the Mushkegowuk Tribal Council, for example, and several months ago we supported a recent council resolution on land use planning and environmental assessment and consent. Last year we hired a bilingual Oji-Cree-speaking mining coordinator from the far north to reach out to communities about mining issues.

We believe that the First Nations communities who live in the far north should have a say in how traditional lands will be planned for and managed. We also have worked with the Ontario Prospectors Association to disentangle protected areas from mineral tenure. In fact, in this part of Ontario we worked with the First Nations, Ontario Prospectors Association, the forest industry, various provincial ministries and others on the Woman River Complex conservation reserve. Due to a mapping error, a proposed protected area overlapped with patent lands. We all worked together to fix this problem and agreed on new protected-areas recommendations.

We believe in the art of the possible, and reaching out to unlikely allies gives us the best opportunity to create long-lasting policy solutions that are in the best public interest. Wildlands League has an active interest in both Bill 173 and Bill 191. We will be speaking to both today.

I now ask my colleague Anna Baggio to speak on the Mining Amendment Act before I share our comments on the Far North Act.

Ms. Anna Baggio: Thanks, Janet. We welcome the opportunity today to provide comments on proposed legislative amendments to Ontario's Mining Act to reflect modern-day values associated with our public lands, alleviate land use conflicts and to protect the public interest.

On April 30, 2009, Wildlands League was pleased to see several changes proposed by Minister Gravelle with respect to Ontario's Mining Act. In particular, we believe there is potential in the proposed new dispute resolution process for aboriginal-related issues to mining, withdrawals of areas that are culturally significant and an increased regulatory system for exploration. Bill 173 also proposes to enshrine in law the requirement for approved community land use plans prior to the opening of new mines in the far north. This is precedent-setting, and we look forward to working with MNDMF and MNR on operationalizing this requirement. Overall, we'd like to recognize the minister and his staff for working diligently to find creative solutions to seemingly intractable problems.

After reading Bill 173, there are several areas where significant improvements are needed to the bill in order

to reflect a modernization of the law. Below, we list six areas where improvements are needed. These are: consent of aboriginal peoples, prioritizing land use planning, environmental assessment, improved permitting, sufficient rules for uranium mining, and financial security for 100% of the cleanup costs.

In the interest of being brief and expedient, I will just provide three examples of the types of changes we'd like to see in Bill 173. We've already given a full description of these changes to the EBR and will be submitting a full description to this committee as well.

With respect to the consent of aboriginal peoples, Wildlands League supports the UN Declaration on the Rights of Indigenous Peoples, which mandates that First Nations provide free, prior and informed consent to any activity that may impact their interests. In relation to the handing out of exploration plans and permits, we suggest that the director of exploration plans and permits consider whether aboriginal community consent has been obtained, which may include consideration of any arrangements that have been made with aboriginal communities affected by the exploration.

With respect to the proposed dispute resolution mechanism, we recommend that aboriginal communities have a role in choosing individuals responsible for dispute resolution processes. Our recommendation for some new language would go as follows: "The minister shall designate the individuals or body under subsection (1) only if the aboriginal community agrees to the individual or members of the body being considered by the minister for designation."

1200

Finally, I'd like to turn your attention to the lack of environmental assessment for mining activities in Ontario.

We remain concerned that mining activities in Ontario are exempt from environmental assessment. Recently the Ministry of the Environment granted MNDM's request for extensions of the two declaration orders that exempt mining activities from environmental assessment. We suggest that the committee look at the lack of environmental assessment and consider that these two declaration orders, namely MNDM-3 and MNDM-4, which expire on December 31, 2012, not be extended or renewed by the minister.

Ms. Janet Sumner: We also welcome the opportunity to provide comments on Bill 191, An Act with respect to land use planning and protection in the Far North.

Wildlands League has a long history on and interest in this file. We congratulated the Premier on this precedent-setting announcement last year and we continue to offer our enthusiastic support for the Premier's vision.

Most recently, we sat on the Minister of Natural Resources's far north planning advisory council and worked with our colleagues in industry and other groups to produce sound consensus advice for the minister. The council submitted its advice to the minister in March 2009. CPAWS Wildlands League stands by the recommendations of the far north advisory council.

Bill 191, in its current form, however, does not give life to the incredible vision and commitment made by the Premier. It also doesn't reflect the fulsome consensus advice provided by the council in March or the aspirations of First Nations as indicated recently in a letter to the Premier by Grand Chief Stan Beardy of NAN.

As council noted in its advice, this initiative "has the potential to transform this unique region in a number of ... ways that would make it a precedent-setting model for the world:

"(a) to provide the people who live in the region with an active decision-making role over planning their own future;

"(b) to establish an internationally significant, connected network of culturally and ecologically important protected lands and waters within a still-intact boreal region of our world, which is experiencing global climate change;

"(c) to accomplish long-term economic prosperity for northern communities based on the best environmental practices by business, and a new government-to-government resource-benefit sharing regime."

It is in the best interests of all Ontarians that Bill 191 be substantially changed in order to fulfill the incredible vision laid out by the Premier and to make it truly precedent-setting for the world. We want to see this bill substantively improved, not withdrawn, as others have recommended.

Here is a summary of some of our key recommendations.

Institute a new, independent board, as the far north advisory council recommended, to be made up of provincial and First Nation appointees, to oversee the implementation of the far north planning process. This independent board would approve local plans, coordinate the development of a regional strategy and integrate the broad-scale strategy at the local level. It would aid in dispute resolution and disburse funds in an open and transparent manner.

Close the loophole that allows transmission lines and roads to proceed ahead of land use planning. Unplanned and ill-considered transmission lines and roads could lead to permanent fragmentation and ecological harm to the intact northern boreal region. At the very least, the independent board should be mandated to coordinate the planning of transmission lines and accompanying roads at the landscape level.

Make it clear that First Nations will be enabled to establish and manage a permanent network of interconnected protected areas—areas free, essentially, of industrial development. That would be consistent with the Premier's vision.

Adequately resource this initiative. We support the far north advisory council recommendation of a new investment of \$100 million over five years. If you're going to plan 43% of the province, you'd better put your money where your planning is. This initiative will fail if it is not properly resourced. We know that of the \$30 million originally dedicated to this initiative, two thirds

went to MNR and only one third is dedicated to enable community planning over four years. This means that, to date, the province has allocated approximately \$10 million over four years to plan for 45 million hectares, or 43% of the province. The lack of resources is seriously impeding the province's ability to deliver the Premier's spectacular vision. It is also not inspiring confidence in its key stakeholders or the First Nations people who live there.

Outline in legislation the functions that a far north science committee shall perform to support implementation of the Premier's announcement.

Thank you for your time today.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. We have about three minutes for each party, beginning with Mr. Brown.

Mr. Michael A. Brown: Thank you for appearing and helping us with these two issues.

I want to speak first to 191, which is in first reading; an unusual but not totally unique process, but we usually as a Legislature do not conduct public hearings after first reading. It is our hope, and I will tell you this, that after second reading—if it gets second reading, because no one should ever presume that—there will be another set of hearings and I appreciate your direct recommendations that might help us.

One of the questions I have been asking, though, about this—you're suggesting in 191 that there be a planning council that would coordinate the various planning activities of First Nations within the area. One of the problems I see and I think others see is that each First Nation tells us that they do not cede the responsibility to anyone to do that planning. Have you got some views on how we could work with the First Nations to make sure we have a coordinated plan?

Ms. Janet Sumner: Yes. I mean, this planning board would be made up of both First Nations representatives and government, so it would not be out of the hands of First Nations, number one. There are different scales or levels of planning. When you're planning for a road infrastructure that is going to crisscross several First Nations, you would want to make sure that it was a coordinated plan, that there was consideration across that full watershed or that regional area where you would be contemplating that. Same thing with large-scale transmission corridors, those kinds of things. You would need to have that kind of coordination. That even goes to coordination that happens between different types of land uses.

Right now, in the absence of any kind of planning act, what's happening is mining is going forward, but is that compromising where you might want to put hydro development? Those two things are happening in separate ministries, so that's another reason to create some kind of a planning board, that it actually will be cross-ministerial and looking at the planning that's happening, which could actually be compromising not just natural values but also industrial and economic values.

It's very true that we believe that the First Nations should be leading the planning for their communities and

that's another level of planning. It's really where you put the level and the onus and what responsibility, so when you're doing those large scales, it's not that the individual community is not part of that, just in the same way that Mushkegowuk is working because they're looking at a regional level. It doesn't mean that their local communities are not actually doing any planning; they are, very much so.

Mr. Michael A. Brown: We had presentations earlier in the week from First Nations that are very close to finalizing their land use planning. The other issue we have, I suppose, is that there are various levels of work that have been done to this point. So you see this planning council or advisory council as a way of bringing everyone along with the same result, I guess?

Ms. Janet Sumner: There are many communities that are further along and some that aren't as far along and they're choosing their own path. I know some communities that really want to engage in a mapping out, a full exercise; they're not rushed, they don't want to move forward on mining right away. They're interested in taking a slow and very deliberate approach. There are others—we've worked with Constance Lake, which is interested in moving forward on a land use plan but they're also interested in moving forward on a mine. We get that and we think there needs to be some dovetailing of where those processes are; you can't ignore that.

Mr. Michael A. Brown: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you for your presentation. On page 1 of your presentation you state, "We believe that the communities who live in the far north should have a say in how traditional lands will be planned for and managed." We've heard, both at the committee level and outside the committee, that a large number of the First Nations communities are opposed to the 225,000 kilometres of protected area. How do you feel about that? Should they be able to shut down those 225,000 square kilometres?

Ms. Anna Baggio: In terms of how we envision the 225,000 square kilometres, that's a vision that was put forward by the Premier. In terms of how we see it being implemented, we know that First Nations want to protect their lands and we know First Nations want to develop parts of their lands as well. How we see that being implemented or how we envisioned it is that First Nations would actually be designating the lands they want protected and designating the lands where they want development. When we actually sit down with First Nations and look at how they want to take care of their lands, and when we look at the experience across Canada, they actually end up protecting quite a large portion of these lands because it's so integral to their culture and their survival. So we have a lot of faith that when First Nations are able to do the planning on their own without being encumbered by other interests or even our own interest, they'll do a fair job. We think that if the province sits with the First Nations together in a shared decision-

making format, that vision will likely be exceeded because of the ties that the First Nations have to the land.
1210

Mr. Jerry J. Ouellette: The previous legislation that has passed in the House gives the Minister of Energy the authority to develop hydro development in protected areas. How do you think that would play out, having a minister not responsible for natural resources making decisions about how you could move forward with developing hydro development in, say, the 225,000 square kilometres?

Ms. Janet Sumner: That's in the parks act, and we worked on the parks act as well. What it says is that you can do hydro development in lands that are without other industrial footprint specifically for the use of First Nations, so those two things are not inconsistent. The Premier's vision was to have conservation lands without a significant industrial footprint. When it is for a community, for example, that's trying to get off of diesel and they want to have hydroelectric development, that's not going to be inconsistent with that vision.

Mr. Jerry J. Ouellette: You also mentioned the \$100 million in funds needed but you don't really give a breakdown, because currently the problem is that two thirds have gone to the government agencies to use that. Do you have a breakdown of the \$100 million and how you feel that should unfold throughout the communities?

Ms. Janet Sumner: Yes. In terms of the \$100 million, not necessarily a breakdown per se, but rather that that would flow through this independent board or planning body that would be constituted of First Nations and government, so they would decide how that would be distributed and it would be an open and above-board process. Presumably, if First Nations are participating in that, they would have a say in how that \$100 million was to be distributed, whether it was to go for more scientific research or more aboriginal knowledge, traditional knowledge, or it was to be for specific communities to do planning, rather than the current situation, where you find somebody like the Grand Chief Stan Louttit going to the government, saying, "I'd really like to get this planning going. Can we really get it going? Come on." It's on this individual project basis and you have all this piecemeal stuff where the northern Ontario heritage fund is funding road infrastructure, but nobody is funding the land use planning that needs to be ahead of that.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson.

Mr. Gilles Bisson: Just a simple question up front, then a couple after: Do you support Bill 173 in its current form?

Ms. Janet Sumner: We've made some very substantive recommendations on changes, so we'd like to see those changes.

Mr. Gilles Bisson: And the same thing under Bill 191.

Ms. Janet Sumner: Yes.

Mr. Gilles Bisson: Okay. Now, you made a comment in your presentation in regard to no road or hydroelectric transmission corridors being allowed until—I take it what

you're saying is until the land use plans are put in place. Considering that Mushkegowuk Council, as you know, is working towards getting a road, have you had the discussion with them in regard to how they feel about that?

Ms. Anna Baggio: We've spoken about roads a lot over the years with the communities. It's not one 15-minute conversation; we've spoken about roads a lot. See, in order to actually construct the road network, you have to sit down and plan for it across the large scale anyway, so if they have to do that anyway, why don't they just formalize it and have the board facilitate a process where they bring all these communities together in a cross-ministerial way that's going to make sense, instead of having this ad hoc "I'm going to punch a road here, punch a road there"? These linear disturbances are so detrimental from an ecological perspective, and they're permanent. Once you punch a road through, it causes all other kinds of development to come through—transmission lines. You can't fix that mistake if you put it in the wrong spot. For us, it's not about stopping those lines; it's about making sure they go in the right spot so that we're taking into account things like cultural areas, watersheds, you name it.

Mr. Gilles Bisson: But if First Nations are in the driver's seat when it comes to determining where the road is, is that sufficient comfort?

Ms. Janet Sumner: I'll take that one. I think there's also—we might look at land use planning; there's a final product. You can look at many First Nations that are developing their land use plans, and is it ever final? There are going to be different stages in which you're going to be able to say, "Do you know what? We're really comfortable. We've looked at the options here. We know that we'd like to move forward on this hydro development," or "We've decided that these are where the burial grounds are and we know that we want to withdraw those from mining." So there would be some clear decision points where you've looked at things. I think roads are like that.

But at the same time, you really need to have that regional look. I know Mushkegowuk has been trying its best, but right now nobody's been funding the land use planning, and that's where we have to make sure—they're going after the funding for the roads planning because it exists. Nobody is really giving the money out to actually complete the land use plans or expediting it, or saying those two things are tied. It's because we don't have a planning act that that's happening.

Mr. Gilles Bisson: But also because they want a road.

Ms. Janet Sumner: Yes, but if they had money to do the land use planning, would they perhaps not be doing that as well? I know the grand chief has been in there asking for the money to do that.

Mr. Gilles Bisson: The other thing is that—

The Acting Chair (Mrs. Linda Jeffrey): It'll be a really quick question.

Mr. Gilles Bisson: It's hard to do; it's all around permitting. So we'll have the conversation as we draft amendments.

Ms. Janet Sumner: Okay.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much for being here today. We appreciate it.

Committee, we're in recess right now. It's a quarter after 12. You have 45 minutes for lunch. We'll be starting promptly at 1 o'clock.

The committee recessed from 1215 to 1302.

The Acting Chair (Mrs. Linda Jeffrey): We're reconvening general government. This is our afternoon portion, discussing—

Mr. Gilles Bisson: Point of order—

The Acting Chair (Mrs. Linda Jeffrey): After I read this.

We're discussing Bill 173, An Act to amend the Mining Act, and Bill 191, An Act with respect to land use planning and protection in the far north.

Mr. Bisson.

Mr. Gilles Bisson: I just got notification from one of the prospectors that Mr. Dave Munier would like to present, if we could add him at the end of the presenters, please.

The Acting Chair (Mrs. Linda Jeffrey): I think we need to have a discussion amongst the committee about that.

Mr. Gilles Bisson: The subcommittee decided that anybody who was here would be able to present, that we'd put them on.

The Acting Chair (Mrs. Linda Jeffrey): All right. Is there any discussion about that? Mr. Brown.

Mr. Michael A. Brown: I have a fairly tight time frame in terms of flights this afternoon—that's the only issue I have. I need to be able to get to Pearson to catch another flight.

Mr. Gilles Bisson: Are you going to the NDP convention?

Mr. Michael A. Brown: Is there one?

Mr. Gilles Bisson: A federal one, yes.

Mr. Michael A. Brown: What closet is that in?

Interjection.

Mr. Michael A. Brown: No, I don't know what—

Mr. Gilles Bisson: He's not requiring a lot of time. We'd be done by about 2:45.

Mr. Michael A. Brown: I would like to hear him. I'm just wondering, do we—

The Acting Chair (Mrs. Linda Jeffrey): So there's a willingness to hear an additional delegation?

Mr. Michael A. Brown: Isn't there a space this afternoon?

The Acting Chair (Mrs. Linda Jeffrey): We have one person who has presented this morning who could technically—

Mr. Michael A. Brown: So there is an opening in the schedule. What I'm saying is, rather than waiting until the end—

The Acting Chair (Mrs. Linda Jeffrey): No, we just push everybody up.

Mr. Michael A. Brown: Push everybody up, if they're here. So at 2 o'clock we could hear him for a—

The Acting Chair (Mrs. Linda Jeffrey): We'll work it out. You don't need to worry about the time. Who are you adding, Mr. Bisson?

Mr. Gilles Bisson: Mr. Dave Munier.

The Acting Chair (Mrs. Linda Jeffrey): Okay. He'll be added to the schedule. I presume he's here in the building?

Mr. Gilles Bisson: Yes.

The Acting Chair (Mrs. Linda Jeffrey): Okay, great. Really, what he should be doing is waiting in the audience, because we're going to try to move through the others, and nobody's on exactly where they said they were going to be.

NORTHWATCH

The Acting Chair (Mrs. Linda Jeffrey): Our first delegation is from Northwatch. Is that you?

Ms. Brennain Lloyd: That's me.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Everything is changing; I'm never sure who I have in front of me.

Thank you for coming. We appreciate you being here, and you have 15 minutes to make your presentation. I will give you a one-minute warning if you get close to the 15-minute mark. Whenever you're ready to begin, if you could state your name and the organization you speak for, and then you'll have 15 minutes. Afterwards, we'll ask questions.

Ms. Brennain Lloyd: Thank you, Madam Chair and members of the committee. My name is Brennain Lloyd, and I'm here representing Northwatch. Northwatch is a regional coalition in northeastern Ontario. We've been around for about 20 years and we work on regional issues from a northeastern Ontario perspective, primarily related to land use and natural resource planning: mining; forestry; energy issues; electricity issues; waste from time to time, particularly if there are proponents from outside the region seeking to make a project in northeastern Ontario for imported waste.

We have an extensive history working on mining issues, both project review and policy review. We were part of the leadership council of the Whitehorse Mining Initiative in the mid-1980s and are represented on the minister's Mining Act advisory committee for the Ministry of Northern Development and Mines in Ontario. We also participate in a number of different federal initiatives related to mining and mine remediation, including the National Orphaned/Abandoned Mines Initiative, of which I'm a member of the steering committee.

I'm pleased to be here this afternoon and speak to you about this important bill, Bill 173. Bill 173 reflects both Northwatch's assessment of what changes are required, but also reflects the expectations of the people of Ontario that I think flow from the commitments made by the Premier of Ontario and the minister about a year ago, during the summer of 2008. The minister, in his July 14 statements, committed to create a resource benefit-sharing system related to mining revenues and also to

review and revive, reform and modernize Ontario's Mining Act. A discussion paper was released on August 11, just over a year ago, discussing the modernization of the Mining Act.

I think that these commitments quite rightfully created an expectation among the people of Ontario that our Mining Act would be truly modernized. I think that some of the language in the Mining Act was appropriately describing those expectations that it would create a sustainable and socially appropriate mining regime, and certainly environmental responsibility would be part of that. We, however, found the scope of the discussion paper last year to be quite narrow. It really focused primarily on the exploration stage, and while certainly the exploration stage might be the part of the mining sequence that is least regulated and so perhaps most in need of reform, we think that if you are going to truly modernize the Mining Act, there were other key sections of the act that need attention as well. We have provided those in our comments on the discussion paper but have yet to see them reflected in the output of that public consultation and review process from last summer.

In a broad sense, Bill 173 does represent modest progress towards the modernization of mining in Ontario, but it's simply not enough progress and certainly doesn't match the expectations or the commitments made last year by the Premier and by the minister. The extent of the improvements is yet to be determined, because much of what is to be delivered through Bill 173 will actually be delivered in regulations. Those have not yet been drafted, and so we still can't assess, at the point when we're before committee, what the effectiveness of this act is truly going to be because we don't yet know what's in regulations. It is largely a set of enabling revisions that we're seeing. Certainly the ones that we're more positive about are changes that enable further change, but we don't know what those regulations are going to look like and so how satisfied we'll be and how close they will come to actually modernizing the Mining Act for Ontario, but also, more importantly, modernizing mining in Ontario. That's really the focus.

1310

There are two key areas of improvement in Bill 173. One is the improvement of the requirements for exploration plans and permits, as outlined in section 78. That's a very important set of improvements. It's a very important change, but it is the change that is perhaps the most mysterious because its delivery, its effectiveness, is going to rest almost entirely on what is in the regulations that are yet to be written.

Another very important area of improvement was the amendment of the act including the purpose, and in its purpose to require that, "prospecting, staking and exploration for the development of mineral resources"—and I quote from Bill 173—be conducted "in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult...." It's a very important change, and we applaud the government

for making that change. We're not sure yet that we see the commitment that changes made by including those statements in the act will actually be operationalized, so it's another area still to be seen.

Our review of Bill 173 includes a review of the progress made on our recommendations provided in 2008 in response to the discussion paper, as well as a section-by-section review on key elements in the bill. What I've provided for you today is a preliminary draft; it's not yet comprehensive. We'll be making a final submission for the September 4 deadline.

We have looked at the act through those two lenses, one taking a progress report approach, viewing the changes proposed through Bill 173 by comparing them to the recommendations that we made last year in response to the discussion paper, and that's outlined for you in pages through to about 6 of the submission that I provided for you. As you'll see, there has been progress, but progress has been modest. One of our key recommendations was that the permitting system must be established for early exploration activities. This is authorized by section 78, and as I've said is one of the areas that we view very positively in Bill 173. But again, the effectiveness of this section will be determined and decided by what actually makes it into regulation.

We also recommended that inventories of natural, cultural and social values be made when a claim is first staked, before there's any exploration activity, before there's any disturbance of the site, before any of those values are lost, be they cultural, natural heritage, ecological, social values. We don't see that there. It could potentially be included in the regulations that are to be developed.

Following section 78, we're concerned that the bill is not specific enough in its direction to actually enable those requirements to be delivered in regulation. We're not sure. I'm not a lawyer. Perhaps legal can give some advice on that, but at this point it's an unknown.

We had also really looked to see shared decision-making processes with First Nations, and those must be developed on a government-to-government basis. Those changes to the purpose of the act, and that recognition of aboriginal and treaty rights in the constitutional enshrinement of those rights, suggests that we should see progress in that direction, but again, we don't see it operationalized.

The revenue sharing with aboriginal peoples, or, as the city of Sudbury strongly promoted during the consultations on the discussion paper last year, revenue sharing with municipalities, with all communities: We simply don't see them there.

We had also made specific recommendations around rehabilitation plans, which could, again, be delivered through regulations under section 78. It's an unknown.

Public consultation is a very important element of mining project review. It's minimal in terms of how the current version of the act requires public consultation. We don't see any improvements in that and we don't see any particular specific note in section 78 that ensures that

there will be public consultation and public review opportunities during the development of exploration permits and plans. We think that's a high-level priority.

There are a number of recommendations we made on land use planning in the north which potentially are being met by Bill 191, but again, only potentially.

There were also important elements that were missing from the review. This is what's required if we're going to truly modernize mining in Ontario. We have to take a more comprehensive approach than was done either in the discussion paper or in Bill 173. In particular, I would point to a short list of areas. Financial assurances came into Ontario in the mid- to late 1990s. We've been working with them for a decade. There's a low level of public confidence around the system that we have in place. It needed to be reviewed. That wasn't included in either the review of last year or reflected in Bill 173.

Exit tickets are a new mechanism—well, a decade old, but relatively new. Exit tickets were introduced in the changes to the Mining Act in the mid-1990s. The criteria for determining the basis for providing an exit ticket, allowing a company to turn its properties back—there are no criteria in existence. There has only been one application for surrender of land under this subsection—subsection 183(1) of the current act—and there were no criteria available. From what we could determine at that time, largely in discussions with Ministry of Northern Development and Mines staff, there was no guidance document available to them. In the end, the fee that was proposed to the proponent was the amount of money that would be required to maintain the fencing around an open hole in the ground that had developed after a crown pillar collapsed post-closure. After the closure plan had identified that the ground was stable, the ground collapsed, and the fence was put up. The fees required are to maintain the fencing. There is nothing to deal with the chemical instability, the physical instability of the site.

We recommended that public consultation requirements had to be improved. Mining reporting requirements that were removed or reduced over the last decade—there's no longer a requirement for annual reports. That's an important gap that should be closed.

Right now, we have an approval process. We have a number of different ministries—the Ministry of Northern Development and Mines, the Ministry of the Environment, the Ministry of Natural Resources all have different pieces of the approval process. There's not a coordinated approach—certainly not a coordinated approach in the public consultation, in the public review aspects of the permitting processes. We've actually seen mine proposals that changed from the Ministry of the Environment sewage works application for a certificate of approval to the Ministry of Northern Development and Mines' closure plans. Important aspects of the mining project changed. That's problematic. Perhaps it can't be fixed through a single change to the Mining Act, but a coordinated approach is required and necessary if we're going to truly modernize mining in Ontario.

The section-by-section review of Bill 173—we note with concern that the definition of inspector has been

removed. There has been a new section added later in the act in, I believe, part X of the act. That removal of the definition, I think, undermines section 78.3 in particular. The rationale provided to us for that removal of the definition of inspector was because it related solely to section 75. I think section 78.3 also relied on that definition.

1320

The purpose of the act—I've already spoken to this in a couple of points—really should be to regulate rather than to encourage mining, prospecting and mineral development. We have other instruments for encouraging mining. The purpose of the act should be to regulate, to govern, to oversee. But to encourage—

The Acting Chair (Mrs. Linda Jeffrey): Ms. Lloyd, you have less than a minute left.

Ms. Brennain Lloyd: Thank you.

Other important changes: We support the changes to section 78 but we think that the effectiveness of this section is still unknown. It needs to include requirements for public consultation, and it doesn't clearly identify the requirements for environmental protection, inventories, baseline studies and remediation.

We support the addition of the section on inspection but, as noted, feel that it still needs to be supported by the definitions section.

Finally, the subsection in part XIV, "Far north," on "No new mines": This section undermines itself. Really, what it says on reading is, "No new mine unless there's a new mine," because this includes an ability for an order in council to actually approve a mine in the far north prior to the completion of a land use plan, by order in council, if it's in the economic interests of the people of Ontario. I think that really undermines the bill and really is in stark contrast to the commitments of the Premier and the minister last year.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Bisson, you have a minute and a half.

Mr. Gilles Bisson: I want to thank you for what is a pretty in-depth look at the legislation. Excuse me; I've got a bit of a cold here.

Where to start? In the affirmation clause, you're making the point that you see this as good but it's lacking in detail. What I take it you're arguing is that there's nothing wrong with inserting that in the legislation but there needs to be more detail about what that right means. Can you elaborate on that a bit?

Ms. Brennain Lloyd: Yes. I think we all understand that legislation enables and regulations operationalize. But whether or not this legislation has enough enablement to actually make good the commitments now inserted into the purposes, and how it's going to be operationalized in the regulations—I don't see that.

Some examples of other gaps we've identified: the absence of any commitment to revenue sharing. I think those are key omissions. It's good to have the commitment, but commitments are only commitments on paper unless they're operationalized.

Mr. Gilles Bisson: In regard to the exploration permits, the argument you make is that there have been gaps

between what was given in a permit and what actually ended up being in the closure plan at the end. We hear mining outfits that come before us, and others, who say that at times, conditions change. How should you deal with change without making it too onerous?

Ms. Brennain Lloyd: The difference I was referring to was a mine that, in one of their permitting documents, said they were going to process the ore in Sudbury, and one of their permitting documents said they were going to process the ore in Timmins. I think that's a significant difference in a mine project. They were described differently in two permitting documents for two different ministries.

I think that some of the concern of the exploration industry is that they don't want to be too specific in their exploration plans because they might want to change their minds in the field. We hear that from the forest industry as well, and they found ways to deal with it. So I think the mining industry can find ways, the exploration sector can find ways, to deal with that. I think that you need to know what's in the field, to ensure that you're not going to lose what's in the field from an environmental and ecological perspective.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Brown.

Mr. Michael A. Brown: Thank you, Madam Chair. Obviously, good to see you again, Ms. Lloyd.

Ms. Brennain Lloyd: Thank you.

Mr. Michael A. Brown: You have provided us with a very comprehensive document that I haven't quite digested yet. I think our officials need to have a good look at the points you make as you go through and identify specific improvements that might be made to the legislation.

I would just tell you, of course, that Bill 191, the Far North Act, is in first reading and the reason for that is to come out and hear what people have to say so that we have two opportunities to make changes to it. One would be now, before it goes back to the Legislature for second reading, and if it succeeds at second reading, to do it again, to see if we've gotten it right. I just want to throw that out to you so you'll recognize that there's at least a second kick at that particular cat.

Ongoing, as you point out, the operational side of this is in regulation, and we're hoping there continues to be a dialogue on how we provide the regulations within this act.

I don't particularly have a question, because you've put so much in front of me I'm not quite sure what to ask—other than to point out that we need some kind of transition period, especially in the 191 area, to provide for communities that have not gotten to the state of having their land use plan totally done and yet have identified a project as being one that they would want to go ahead—

The Acting Chair (Mrs. Linda Jeffrey): Mr. Brown, could you get to the question, please?

Mr. Michael A. Brown: So if you understand, that's about transition rather than trying to negate the act.

Ms. Brennain Lloyd: I understand it's potentially about transition and it's potentially about overriding, and it's impossible to tell at this point which it's going to be. I think if I had another 15 minutes I could talk about Bill 191, but I will say it suffers from some of the same shortcomings as the far north section of Bill 173. It has that same tone of, "No new mine unless there's a new mine. No mining unless there's mining."

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier.

Mr. Randy Hillier: We all recognize the value of mining, especially in the north. Indeed, this city and this resort and places might not be here if it wasn't for mining and probably none of us would be attending these meetings at all. So I was a little bit taken aback when your statement was that this bill ought to regulate and not encourage mining. Of course, if we're not going to encourage, then the only conclusion is that we're there to discourage mining through regulation. These amendments that you're proposing: Is it the intent to discourage mining in the north and prevent that development of prosperity and jobs in this area?

Ms. Brennain Lloyd: Absolutely not. I don't think the act should discourage mining either. It should be neutral. There are other instruments for encouraging mining. We have subsidies available. There are other mechanisms of government that provide that encouragement. We're certainly very aware of the importance of the mining sector and the importance of having a very stable and long-term mining industry in northeastern Ontario. We've certainly suffered some difficult times when they've gone out quickly and other projects have proposed to fill the gap. So we're very much not intending to discourage or reduce the presence of mining; we're intending to encourage responsible mining and encourage government to play the role of regulator in this piece of legislation.

Mr. Randy Hillier: So you're suggesting that it should be, instead of a streamlined and effective model that would encourage mining through subsidies or things of that nature—that we'd be better off to encourage mining instead of a streamlined process?

Ms. Brennain Lloyd: No, I'm saying those are other mechanisms that are already in place. I think a streamlined and effective mining regulatory regime can be exactly that: streamlined and effective. You don't have to trade off efficiency for effectiveness.

The Acting Chair (Mrs. Linda Jeffrey): Thank you very much, Ms. Lloyd, for being here today. We appreciate it.

OTTAWA COALITION AGAINST MINING URANIUM

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is the Ottawa Coalition Against Mining Uranium. Is Mr. David Gill here? Welcome. Thank you for being here. I know you've been here for a little while, but I'll still go through my preamble as you get yourself seated, because we do have some new delegations. You'll

have 15 minutes. I will give you a one-minute warning before you get to the 15-minute mark, should you get there, and there'll be an opportunity for questions. If you could state your name and the organization you speak for, you can begin whenever you're ready.

Mr. David Gill: My name is David Gill. I'm here to speak on behalf of the Ottawa Coalition Against Mining Uranium. This coalition exists in the city of Ottawa.

I'd like to say thank you for the opportunity to speak on Bill 173. I want to make it clear that—a lot of people have taken a lot of time to do a lot of analysis, to take a look at submitting some of our own time, our own lives and resources, to try to make Ontario better, because this is about trying to get good law and good legislation.

1330

OCAMU, the Ottawa Coalition Against Mining Uranium, came about primarily because of the Frontenac Ventures mess in Frontenac county. I live in Frontenac county, Central Frontenac. I also have a home in Ottawa because I work in Ottawa. I'm an economist and I work for the Treasury Board of Canada.

This problem that happened in Central Frontenac with staking of a large area of private and crown land for the purpose of uranium got a lot of people pretty upset. I was part of that group that was upset. I started to do some research about uranium. Of course, uranium is a pretty sexy kind of thing and it does get people upset because it relates to nuclear and radiation and all of that. But the more we started to really understand what was really going on in the situation, we recognized that it was perfectly legal for Frontenac Ventures to do what they did.

I joined with several people in my community. My neighbours are the Shabot Obaadjiwaan Algonquin and the Ardoch Algonquin. I joined with them to protest this. In fact, I was behind the barricade quite a bit during that time and I came to know Bob Lovelace and Chief Doreen Davis very well, and I realized they were honourable people trying to represent their communities. I had the honour of canoeing from the headwaters of the Mississippi to carry water down to Ottawa, right to the Ottawa Parliament building, to show that the water flows from where they wanted to put tailings, into Crotch Lake in our area there, and this was potentially going to be a health risk to the city of Ottawa.

That's how the Ottawa Coalition Against Mining Uranium came about. Lots of people started to hear about this after that canoe protest, and I'm happy to say that several municipal councillors in Ottawa joined with us and put forward a petition to the city of Ottawa, where several people from many communities around, of all ethnicities, came together to present to the Ottawa city council. They passed a resolution on February 27, 2008, to petition the government of Ontario for a moratorium on uranium mining in eastern Ontario. There was a unanimous decision to do that. That letter went to the province of Ontario and, as I understand it, there hasn't even been the common courtesy of a response. Kingston, another fairly large municipality, did the same thing:

passed a resolution asking for a moratorium—and Peterborough. I understand some 24 different municipal-level governments and townships joined together and asked for a moratorium on uranium mining.

Now, what happened is, we started to realize that it wasn't the uranium so much that was the issue; it was the way municipal governments interact with the provincial level of government and the total ignoring of the requests that were being made. So OCAMU, the Ottawa Coalition Against Mining Uranium, joined a coalition called CBMAR, the Coalition for Balanced Mining Act Reform, because we recognized that the Mining Act itself was very much part of the problem.

It's my understanding that as early as 2004—perhaps 2005; I don't have the exact date—the Association of Municipalities of Ontario in fact put forward something to recommend to the province, something that grasped the attention of the Coalition for Balanced Mining Act Reform, and we called this our modest proposal one. You've heard some fairly in-depth problems about reunification of surface and subsurface rights. As my understanding goes, this has been completely ignored by the province and has not been related or reflected in any of the wording of Bill 173. Ottawa, Kingston, Peterborough, Perth, North Frontenac, Central Frontenac, South Frontenac, Haliburton and umpteen others have all been asking for these developments in the legislation to try to give them some real opportunities to do proper land use planning.

We know mining is important, okay? There's no need to be defensive, people in Timmins. I've spoken to some geologists and they seem to think that we're all against mining. Of course we know that metals and minerals support our modern society, and the consumerism that we all are part of, yes, is either going to kill us or it's going to send us out into space one day, one or the other, but we're not against mining. We need the materials that come from mining. But with all due respect to one-horse economies or mining economy towns—and it's a venerable profession that Canada historically has been involved with, prospecting and mining—we have to be very aware and you have to be very aware that of all the people who have jobs, 500 times more people in this province are not employed in mining, not in the mining sector at all.

Yes, of course, I'm an economist; I understand there's an echo effect and lots of other jobs come from a sector like mining and vice versa. Their rights, the people who aren't involved in mining, must be considered and protected. It may be perfectly reasonable to have good, fair, responsible mining going on in a community, but I think communities know whether that's the right thing for them or not. This relationship of the municipal level government to the provincial government is what we have asked for in our second proposal. We want to have community-based, municipal-based land use planning respected by the province. We need to have this written into the bill. If you're going to ask me for wording of the bill, yes, we'd be very happy to provide wording to the

bill. We probably will submit a more detailed submission to the EBR, but the last time that stuff went into the EBR, I'm not sure if anybody read it because you ignored everything when you drafted this bill.

Let me say that community-based land use planning in the north has been put on the table in Bill 173. I think it's an extremely good idea, and if it's good for the north, why is it not good for the south and for the near north? It's true, there aren't that many places that are incorporated townships in the north. Well, there are communities that have interest in their lands and their traditional territories. This is not entirely an aboriginal issue, a First Nations issue. I stand shoulder to shoulder with my First Nations neighbours and I'm prepared to listen to their concerns about their relationship to the land, but I want to speak for my people. I want to speak for the people who I represent in OCAMU from all over the place, settlers, people who care about their land and their communities just as much as anyone else.

There have been some lands withdrawn from staking and mining, but section 175 of the bill is still a pretty vociferous piece of wording. We know it says that any land, under certain circumstances where it's convenient, can be used and abused for mining purposes. Can it be legally overridden, therefore, for cemeteries to be removed? They did it for the St. Lawrence Seaway. Sacred lands and cemeteries were moved away in order to accommodate. I understand you're constrained here with this process—and it's a shaky process; it's a broken process. I went to three of the consultation meetings that the Ministry of Northern Development and Mines held here in Timmins a year ago. I went to Kingston and I also presented in Toronto. I can tell you that the majority of what I heard at those consultations was trying very hard to get around these constrained areas of the discussion paper, these five areas, the three prescribed questions—it was a broken process. I'm sorry, it was just a broken process.

It's not about mining or no mining; it's not a dichotomy just like that at all; it's about fairness. It's for all parties involved, for citizens, First Nations and settlers, for communities that want and do not want mining to have a say in what goes on and what's to be the prevalent activity in their region. It's not about money and investment, although I suspect perhaps it has got a lot to do with money and investment, but I'm not going to get into that today. You cannot convince me that commodifying nature and natural resources without respecting their relationship to all the other important parts of our lives and our livelihoods—it just can't be.

1340

So of course mining is important, and more power to those communities that can make a good living and a livelihood through mining, but I tend to think that it's not right for everyone. There are lots of places where mining doesn't work, and perhaps in that area where I live, in eastern Ontario, there's limited opportunity for real mining to be successful because of the friction and the collision it will have with other sectors of the economy

that people get their livelihoods from—farming, tourism and so on. So, yes, mining when it's appropriate and when it's responsible and when it's decided upon by the community, by the municipality.

So what are we asking for? We're asking for you to protect our rights, to respect the charter, and for all people equally under the law, not one kind of law for the far north, another kind of law for the people who are interested in mining in the near north, and where it's probably correct for then, and another kind of situation for the people in the south, where most of the people live. It's far better for you to protect these rights and our lives rather than to perpetuate the process that's turning Ontario into a Liberia of mining. Some 1,400 mining companies have their headquarters here in Ontario and are traded on the TSX—only 43 mines in the province. So there is some money and investment stuff going on here. That's perfectly okay. It's part of the economy.

In conclusion, I'd just like to say that we have supported and continue to support the Coalition for Balanced Mining Act Reform and three very modest proposals that we would like to see as protections put into this bill. As I said before, we'd be more than willing to help with suggestions of wording. I haven't got time in my 15 minutes to actually go into all of that, but essentially our three modest proposals are as follows.

Single ownership: Reunify the mineral rights and the surface rights—one owner of all land. If you want to mine it, you have to own it. And you can still own it and mine it if you want to.

Real local land-based planning control: Let the communities in the north and municipalities in the near north and south have a say in how things are going to be developed in their area. I know that this is going to require a lot more dialogue and a mechanism that needs to be sorted out, and that's your job, to help get a parliamentary commission to figure that out.

The third proposal is that we want to have, before exploration, not staking, because I don't want to mess up security of tenure, but before any real exploration, digging of trenches and so on goes on, and before mining actually takes place, let there be a full, open, public, comprehensive impact analysis that really determines, is this the right thing?

The Acting Chair (Mrs. Linda Jeffrey): Mr. Gill, this is your one-minute warning.

Mr. David Gill: I don't need that last minute. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Thank you. Committee, you have about two minutes each, beginning with Mr. Brown.

Mr. Michael A. Brown: Thank you for your presentation. I take it we've evolved from it being anti-uranium-mining to an issue of mining in general. Would that be a correct statement?

Mr. David Gill: I don't like the word "anti." You don't need to use that word.

Mr. Michael A. Brown: Against uranium mining.

Mr. David Gill: We were concerned about uranium mining, yes.

Mr. Michael A. Brown: Okay. Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Hillier.

Mr. Randy Hillier: Thank you very much. I do agree with you in that the process is broken. We've heard that time and time again from everybody who attended the minister's workshops in Timmins and Kingston and Toronto, and as well, indeed, through this whole committee process.

In addition to those 24 municipalities that you mentioned, I'm not sure if you're aware and if the committee is aware that on June 19 the Eastern Ontario Wardens' Caucus also passed a resolution very similar to your three points, that the reunification of mineral and surface rights be undertaken in this act and that municipalities in southern Ontario be part of the consulting and planning process for mining activities, just as we're promoting for the Far North, looking for equality in the law for all of Ontario. When we look at all the delegations that have come to these committee hearings, we can boil down a lot of it to that: There is inequality being proposed within the law. Different places, different people, different communities are going to be treated differently—

Mr. David Gill: It seems to be in contravention of section 15 of the charter, in my opinion. I'm not a lawyer.

Mr. Randy Hillier: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: I have a couple of questions. I don't know which one to start with because I don't have enough time, but how about we try this one here: You're saying single ownership of property; you want to unify, as I understand it, mining rights with property rights. Would that be—

Mr. David Gill: Surface rights.

Mr. Gilles Bisson: Yes, surface rights—property rights, wrong term—with mining rights. Are you saying that for all properties in Ontario?

Mr. David Gill: All private properties. There's only 1.4% that are not currently owning both surface and subsurface rights.

Mr. Gilles Bisson: But if I own a lot in downtown Timmins or Scarborough, I don't have mining rights.

Mr. Randy Hillier: Yes, you do.

Mr. Gilles Bisson: You do? That's what I was trying to figure out.

Mr. Randy Hillier: Absolutely.

Mr. Michael A. Brown: You might.

Mr. David Gill: You might not be able to mine, but you certainly own—

The Acting Chair (Mrs. Linda Jeffrey): —to the delegation, Mr. Bisson?

Mr. Gilles Bisson: Well, it's helpful.

The Acting Chair (Mrs. Linda Jeffrey): I understand, but just ask the delegation for now, please.

Mr. Gilles Bisson: All right, just to clearly understand where you're going, the next logical step to that is, if all private properties have mining rights, you're then basically saying that whoever has property rights would have the right to determine if mining is to happen on their lands, yes or no?

Mr. David Gill: Isn't that the way it is now?

Mr. Gilles Bisson: Not really, because we do lots of mining under the city of Timmins.

Mr. David Gill: But they don't own their mineral rights.

Mr. Gilles Bisson: Well, they own the property; this is the point. I'm trying to figure out where you would go with that. But anyways, I'm going to get some research done on that. That's another question.

Interjection.

Mr. Gilles Bisson: That's an interesting concept, I must say.

Impact analysis after staking is needed: What do you mean by that in the sense of, would you see that as a way of slowing down mining or a way of trying to figure out how to do it in a sustainable way? Where are you going?

Mr. David Gill: Well, I think what is required—and I recognize that there's a lot of dialogue needed for a mechanism on exactly how to do this. We talk about environmental impact assessment: Are you going to mess up the water? Are you going to screw up the water intake for—

Mr. Gilles Bisson: But that's already done. That's why I'm trying to figure out—

Mr. David Gill: Yes, perhaps it's done; perhaps it's not done as sufficiently as it should be. But let's say—

Mr. Gilles Bisson: Listen, I have them come knocking on my door, and they find it's quite onerous at times. That's why I'm trying to—

Mr. David Gill: Well, for example, in Central Frontenac when Frontenac Ventures went in there, they completely destroyed a whole bunch of wetlands putting in roads and so on—

Mr. Gilles Bisson: And you're saying they got permit from the Ministry of the Environment to do that?

The Acting Chair (Mrs. Linda Jeffrey): Thank you. I'm sorry, Mr. Bisson, we've run out of time. I'm really sorry. Thank you very much for being here—

Mr. Gilles Bisson: Did they get permit by the ministry to do that?

Mr. David Gill: Yes, they did.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson, thank you very much.

Interjections.

The Acting Chair (Mrs. Linda Jeffrey): I know. You're stretching my patience here.

STEVEN KIDD

The Acting Chair (Mrs. Linda Jeffrey): Our next delegation is Steven Kidd. We're trying to stay on schedule. They're an unruly lot. They're hard to control.

Mr. Steven Kidd: They are an unruly lot.

The Acting Chair (Mrs. Linda Jeffrey): They are unruly—they're interested.

Welcome. Thank you for being here. I know you know the drill, but I'll go through it. You have 15 minutes. I'll give you a one-minute warning if you go that long, and if

you leave us some extra time we'll be able to ask questions at the end. Welcome.

Mr. Steven Kidd: Thank you very much.

The Acting Chair (Mrs. Linda Jeffrey): And if you could state your name. I don't believe you're representing an organization, just yourself?

Mr. Steven Kidd: Do you know what, I'll get right into my preamble in respect of the 15 minutes. Have you started your clock yet?

The Acting Chair (Mrs. Linda Jeffrey): No. My promise is, not until you've introduced yourself.

Mr. Steven Kidd: Thank you for allowing me to speak this afternoon. My name is Steve Kidd. I'm speaking as a private citizen today. I'm a past president of the Northeastern Ontario Chamber of Commerce and the Timmins Chamber of Commerce. My political affiliations are well known throughout the north. I'm going to be taking much more of a holistic-type view in terms of both bills in that they're intertwined so closely.

1350

I think that there's a bit of an introduction required just for those who have never been to Timmins or Kirkland Lake or Sudbury or any of the mining communities. Our economy is based on mining and forestry. Those are the fundamental drivers of our economy. We speak English, we speak French, we speak Cree, and we speak Oji-Cree. That, fundamentally, will cover off the vast majority of the population and the vast majority of the workforce.

We're in a situation right now where Hearst, Smooth Rock Falls, Timmins, Iroquois Falls and a host of other communities have lost tens and tens of thousands of jobs in the forestry industry. I'm not going to speak to the forestry industry, but it is part of what I'm speaking of. A large number of those jobs are not replaceable. We can't hold the government accountable for economic forces throughout the world. Some of these jobs will return, but I think it would be crazy to assume that they will all return. The future of our small communities, depends largely upon mining exploration to replace these jobs in the absence of any policy whatsoever in terms of forestry by the current government.

Exploration by juniors is key. Right now, for your information, in Timmins we have over 60 junior mining companies working within our community. It is generally covert. Most people don't even know they are here, but the number is 60-plus. It could be 70 as of today. We have a tremendous find going at the west end of the city right now. In our mining background, we contribute over \$10 billion towards Ontario's GDP—a very, very important financial driver.

When we talk about exploration north of the 50th parallel, it's imperative we encourage it rather than block it. The north is known to have tens of millions of dollars, that particular area—minerals; anecdotally, billions of dollars. Base metals: The James Bay coast is a tremendous future opportunity. My question to you is, why on earth would you want to arbitrarily shut down half of everything north of 50, or 42% of the entire land mass of Ontario? Does it make the slightest bit of sense, shutting

that down? Are you similarly planning on shutting down the same amount of space in Toronto, Etobicoke, London or Hamilton for the same purpose? Because that's where you work.

Our mining industry has to compete with nations that have little regard for environmental issues, yet we do, successfully. But for how long? Exploration is the lifeblood of mining, and to impair it is a death sentence for northern Ontario.

Rather than shut down half of the north in response to some of these interest groups, the government should be looking at streamlining the permitting process. I know for the De Beers mine, it took over a year for the government to decide which ministry would go first, and there were 41 permits that were required. That's not right.

I have no idea how this bill could have ever even gotten to this stage. If you look at the advisory group, none of them are stakeholders. It's a collection of interest groups that have no stake in northern Ontario whatsoever. I really don't understand how on earth they got to the point where they could start dictating policy to the north, where we actually live it every day. It has been very troubling to me.

I remember a report was done under the Harris government to determine how to improve northern Ontario. It came back basically suggesting that the north be left to die. That particular government rejected it outright. With the policies this government is bringing forward, it appears as though you may be actually adopting it. Your electricity policy, in conjunction with the Mining Act revisions, is to continually raise electricity prices. If that type of behaviour continues, our mills will never reopen again, and in Timmins or in Sudbury, where we have smelting and refining, these are multinational companies: Vale Inco in Sudbury, Xstrata in Timmins. Why would they continue to carry on doing smelting and refining in Ontario when the cost of electricity in Ontario is double that of Manitoba, where they have facilities, and Quebec is running at 75%?

In terms of a forestry policy, there is none. If you look at our existing forestry policy, everything is stuck. Nothing is moving. The big mills are shut down and the entrepreneurs can't get into the bush. There has been no support whatsoever for the forestry industry from this government.

Mrs. Carol Mitchell: That's not true.

Mr. Steven Kidd: There was a \$1-billion fund that was set up, of which \$200 million was spent. The other \$800 million was never spent, not five cents in Timmins—James Bay.

Interjection.

Mr. Steven Kidd: No, we're not the same affiliation, but Mr. Bisson and I are in agreement—

The Acting Chair (Mrs. Linda Jeffrey): Committee, can we stop the heckling, please? Let the delegation finish. You can ask questions when there's a break.

Mr. Steven Kidd: And then when we do get a good thing going, we get a surprise diamond tax on De Beers. Zero growth, artificial subsidies—I'm waiting for the

northern Ontario growth plan to come out. I have no idea what north is going to be in it.

Now I'll put my mainstream hat down and speak to what's by far the most insidious part of the legislation, and that's the treatment of the First Nations. There are a host of First Nations communities north of 50 characterized by poverty and a feeling of helplessness and despair, and you're telling them that 50% of their traditional lands cannot be developed? You're condemning them to a never-ending circle of poverty because some interest groups want to set land aside? You want to usurp the entire First Nations governance model? It's an outrage. It's right up there with the beads-for-Manhattan deal. I can't speak for the First Nations, but I'm certain from what I've heard and read—and unfortunately I missed Chief Stan's presentation this morning, but I'm confident they're as outraged as I am.

But there's a silver lining here, as with most things that are completely intolerable when presented: It will give the First Nations and the mainstream communities a wonderful opportunity to stand united against a bill that's bent on good politics in urban areas rather than good policy for the people who actually live in the area.

I would call on you to withdraw these two bills. Bring them back to committee. Get proper consultation. Think it through. This is just another in a series of policies that are damaging northern Ontario. They're out of tune with how we live and, in all due candour, the rest of the world is fighting a recession right now through stimulus, job creation and rebuilding economic wealth. Why on earth are you taking us on this path?

Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Okay, that gives us about two and a half minutes for each party to ask questions, beginning with Mr. Ouellette.

Mr. Jerry J. Ouellette: Thank you very much, Mr. Kidd, for your presentation. I'm not sure that all members would know exactly what a junior is, and you mentioned that there are 60 or 70 juniors operating in Timmins. Do you know how many juniors are actually members of the OMA?

Mr. Steven Kidd: Well, no. I can't answer that.

Mr. Jerry J. Ouellette: I don't think there are any.

Mr. Steven Kidd: My suspicion would be very, very few. A lot of the juniors operate out of Vancouver.

Mr. Gilles Bisson: They used to be here.

Mr. Steven Kidd: They used to be here, yes, when things were different. But the junior mining companies, I'm certain—again, I cannot speak on behalf of others, but I am certain that the view towards this policy that the junior miners would take vis-à-vis some of the senior miners would not necessarily be in alignment.

Junior miners find things. Eventually the senior miners take them over and they mine them, creating tremendous jobs and wealth for all concerned.

Mr. Jerry J. Ouellette: To my knowledge there aren't any juniors involved and it's all seniors in the OMA. I think there are 14 members now, if I remember correctly,

key members that are operating in the province of Ontario that represent the Ontario Mining Association.

Do you think there should be other incentives as an increase of the ability for flow-through shares in Ontario?

Mr. Steven Kidd: Well, if you look at flow-through shares, again, that's been a very large, hot button for all of us who are involved with economic development in northern Ontario: political people, mayors—I guess mayors are political people—business. Everybody is fully behind flow-through shares. Flow-through shares have developed a great deal of new mines over the years. Right now—Gilles, you might know—was West Timmins flow-through?

1400

Mr. Gilles Bisson: Yes.

Mr. Steven Kidd: There was some flow-through there, there's flow-through at Nebu, Temex, in Kirkland Lake. Flow-through shares are absolutely something that should be considered in any revision of the Mining Act, along with streamlining the permit process.

Mr. Jerry J. Ouellette: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Mr. Bisson.

Mr. Gilles Bisson: You made a comment with respect to the far north planning act and said, in short, that you're taking 50% of the land mass away, thus tying the hands behind the backs of those people who most need the economic stimulus. But in saying that—and just for the record, I want you to clarify something—you support the idea that any development that takes place has to be done in an environmentally sustainable way, right?

Mr. Steven Kidd: Absolutely.

Mr. Gilles Bisson: And you also support that the First Nations have to have a say in what happens when it comes to development.

Mr. Steven Kidd: To give you complete clarity, the government should deal with NAN, they should deal with Mushkegowuk, but in terms of each case, if there is a mining opportunity, they should develop an IBA in conjunction with the local community. Those are my views.

Mr. Gilles Bisson: Yes, exactly. The point I'm making is that if the stated objective of the government is to protect the land, I don't think anybody is in disagreement. If the stated idea of the government is to give First Nations a say in it, I don't think anybody's in disagreement. So then, rather than protecting 50% of the land, should we be looking at this from the perspective of how we do development in the far north in a sustainable way and develop land use plans that reflect that, so that if you find a mine today underground where you thought there was none yesterday, you have an ability to develop it, but with the consent of the First Nations, the protection of the environment and all of those things. Would that be a more rational way of doing things?

Mr. Steven Kidd: This is one of those times, Gilles, where we're in complete agreement.

Mr. Gilles Bisson: My God, the earth has shifted. I have to say, Steve, it's always been a pleasure. I love your hydro policy. My God, you didn't get that from us, did you?

Mr. Steven Kidd: I've heard it from Howard a hundred times.

Mr. Gilles Bisson: Exactly.

Mr. Steven Kidd: A thousand times.

The Acting Chair (Mrs. Linda Jeffrey): Okay. Ms. Mitchell.

Mrs. Carol Mitchell: Thank you very much for your presentation. It was distinctly different than other presentations we had heard for the past four days. One of the things you talked about was streamlining the process and you also talked about doing that in an environmentally sustainable manner as well as in an economically sustainable manner. So what would your suggestions be?

Mr. Steven Kidd: It's rather simple. I pitched the idea, along with others, to your Minister of Finance the last go-round, and at one point even to Prime Minister Martin when he was in power. It's really not that difficult. You have a very convoluted process where you have the federal government and the provincial government with their own agencies that all have their requirements, and there doesn't seem to be a process. I know De Beers—I think it was 41 permits. It took 41 permits?

Mr. Gilles Bisson: It was more than a year.

Mr. Steven Kidd: It was more than a year before they could even decide which government agency was going to go first. This is not necessarily something I'm flaming the province on because I think that both the province and the national government are at fault.

The reality is that if you want to improve mining and you want to improve the numbers, and there is no danger to the environment by having the different processes running concurrently as opposed to, "Okay, now the ministry of this will go first. Oh, okay; now we'll go next," and you repeat the process at enormous cost and huge delay, if you were to look at it—just to give you some rationale for it, in addition to the enormous amounts of money and the huge time delays that are associated with the current permitting process, if you were to really analyze it, assuming right now—today gold is what?—around \$943.50 or something, not that I pay attention, and you want to open a gold mine, it takes you two and a half years before you're done the silly permitting process and now gold is at \$720. Oh, you don't have a mine anymore.

Mrs. Carol Mitchell: So you're talking about harmonizing policies, similar to what we've talked about in terms of harmonizing our tax policy.

Mr. Steven Kidd: Absolutely. It's so simple.

Mrs. Carol Mitchell: Thank you, Chair. That's it.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Kidd. We appreciate you being here today.

Mr. Steven Kidd: Thank you very much.

DAVE MUNIER

The Acting Chair (Mrs. Linda Jeffrey): Our last delegate is Mr. Munier. Is Mr. Munier here?

Interjection: He's here; he's standing at the door.

The Acting Chair (Mrs. Linda Jeffrey): This is my last call for your guest.

Mr. Gilles Bisson: Oh, he's here. He doesn't hear well. Dave.

The Acting Chair (Mrs. Linda Jeffrey): Welcome, Mr. Munier.

Mr. Dave Munier: I'm having a really hard time hearing. I heard something about "welcome."

The Acting Chair (Mrs. Linda Jeffrey): If you'd like to use the headset, that might help.

Mr. Gilles Bisson: Yes. When it comes to questions, I'll get it ready for you. Do your—

The Acting Chair (Mrs. Linda Jeffrey): Well, he might need to hear my preamble, so that wouldn't hurt. Otherwise, I'll be cutting him off.

Mr. Dave Munier: So I'll just go ahead and—

Mr. Gilles Bisson: She wants to say something.

Mr. Dave Munier: Okay.

The Acting Chair (Mrs. Linda Jeffrey): I'm telling you the rules: You have 15 minutes. When you get to 14 minutes, I will give you a warning.

Mr. Dave Munier: Yes. I'll be far shorter than that.

The Acting Chair (Mrs. Linda Jeffrey): Okay. You have the floor. If you could state your name and your organization.

Mr. Dave Munier: The name's Dave Munier. I am from South Porcupine, born and raised in this area. I got involved in prospecting as a result of the Texas Gulf discovery. You'll find that all through the world it's the discoveries that spawn new prospectors. A percentage get involved, and there's a drop-off as well when they realize that there are no quick dollars to be made in the business. What you're left with is a residual number of prospectors who stay with it as a result of seeing this find and what it means to a city or a town like Timmins or anywhere else. That small group of people are few and far between. There is no incentive that a government could give to encourage people to replace them. That doesn't exist. That comes from within, so you want to maintain that group.

The issue I have—I'll just narrow it, because I'm sure it has been spoken of before. The issue that's of paramount importance to this committee is the changes to the way we acquire ground that's being proposed; that is, map staking. While it seems like a small issue, it is actually the very foundation of this industry, and I say that because from the initial work of staking ground comes exploration, and finally development, if you're lucky enough to find a mine.

In the present system, if you encourage map staking or bring map staking in, you will no doubt have fewer people over time—not right away, but over time—involved in the industry, because it will require more money to get involved. The other thing is that large tracts of lands potentially could be tied up by a few companies, which really means, if that key land is tied up, there are fewer players to operate in the same area. Our industry thrives on competition. That's why Ontario has done very, very well over the years and why in places like

Sweden or Norway or other places—Nova Scotia, for instance—where land was tied up by a few people, there was very little exploration. You need that competition. It thrives in an area where the most people can participate. So you want the exploration community to be really diverse, made up of prospectors, junior companies and of course large companies as well. Each one feeds off the other.

The other thing I should make a point of before I go further, and it bears repeating, because most people even in mining towns forget about it too quickly: The mining industry is not just made up of mining companies, say, represented by the OMA, the production people. The other, even more important segment is the junior mining companies and the prospectors. They are the ones who raise the high-risk capital and go out and make the discovery, bring it to a certain development stage, and then the majors with more resources will come in and buy that. It's a key part of the exploration community, so you want to keep that community as large as possible, going out and taking their chances. As I told someone earlier on today, there are not many industries where you can get guys like myself in prospecting who will go out and spend their life and put in their own little savings to try and find something without much incentive from the government. So the government's got these, basically, slaves working out there for nothing.

The other benefit that accrues to the province when you leave in the present system of acquiring claims is that a lot of people in their own environments are employed and earning a very, very good wage. That's quite uncommon today. We see people being laid off all over the place with downturns in the economy. Here, people are working, like myself and others in Timmins and even in the far north. Many of the people who benefit from a stake in the present system are natives as well, and they would be put out of a job.

1410

They're earning a good dollar and they're learning the business as I did. They start with staking, and if they like that type of life, then they'll go on and do some other aspects of exploration like line-cutting and then get into geophysics, and the geophysical crews from southern Ontario or wherever they come in from will be doing work in their area. They employ them; they teach them. It's like on-the-job training. It can't get any better than that. The people are employed in their own environment and they're making a real good wage. They contribute big time to the mining industry and its development. But if you go the other route and bring in this map staking, those people are all eliminated; they're gone. That's one piece of the exploration community that, once again, is made up of prospectors and junior companies, the most effective group in the country for finding mines.

Now, if those people are eliminated over time, what you have left are a number of big multinational companies that mean well, but, don't forget, at that point they've got other countries they can go to and explore. They may find at different points that Ontario is not a

very good place to work. They'll explore in Chile or Peru or Argentina or over in Kazakhstan or wherever, and I'd do the same thing. You go where the best deal is. But with the juniors and the prospectors continuing to explore in the area and finding new things, those companies are naturally attracted back because they don't want to miss an opportunity. So that's really, really key to the area.

The present system of staking really is the most democratic way to ensure that everybody, from the junior prospector with an axe in his hand and a compass, can go out and acquire the land. It eliminates the speculators, people who are not really interested in mining but want to throw some money in. That's what you get with map staking as well.

The classic example of map staking was allowed in this Porcupine camp. When the camp was first discovered—let's say a prospector or a company came in and staked the Pamour mine, which is one of the poorer mines in the camp, out on the east end. With map staking they could tie up the whole piece of land, and that land in the Timmins area, where the heart of the discoveries were made, may not get developed for years because you'd be dependent on that one company to make some real money over there. So they come out and explore the other package of land they have, and if they're not making much money in that deposit, chances are this will be very slowly developed. With it open to a number of competitors, you get people coming to put money in. You get investors from all over the world, as happened here, funding these junior companies. They had a piece of land, they found a mine, down goes the shaft, and you've got a lot of people working. The land would be developed more at a pace that is good for that little company that just happened to get that little deposit on the edge of some real big deposits—and it wouldn't be explored at a pace that develops our province, which is what want. While it seems like a small thing, this map staking has the ability to blow out the whole foundation of the industry, and I don't think anybody wants that to happen.

The Acting Chair (Mrs. Linda Jeffrey): Is that it? Then you'd better give him the headset.

Mr. Gilles Bisson: Yes, it's all turned up.

The Acting Chair (Mrs. Linda Jeffrey): My first speaker is Mr. Bisson, and you have about four minutes each.

Mr. Gilles Bisson: Thank you, Dave, for taking the time to present.

Interjection.

Mr. Gilles Bisson: It should be on already, Dave. You should be able to hear. I think I took it off translation.

You make a point, and I think it's an interesting one because not anybody has raised that, and that is that if you allow map staking, what you could end up with at the end is speculators gobbling up the land. It would be somewhat akin to what happened when we were pushing the railway across Canada, where we had land speculators going in and gobbling up large pieces of land, speculating that, hopefully, the railway would come through their town, but what it ended up doing was

shoving out the smaller farmers and hurting the local things. I appreciate that, and that's something that is good.

If they're going to go to map staking—I'm opposed to map staking; I always have been and I'll propose an amendment to kill it—is there any way to build assuredness? Because the government is telling me in conversations I've had with them that there's a way of doing this that ain't going to lead to those situations that you spoke to.

Mr. Dave Munier: I think you can always try to improve upon the system. It may take years, but the fact that the system here that we have now is working really well and employing a lot more people than what map staking would do—we're essentially eliminating thousands of jobs in the north with one fell swoop by bringing this in.

Mr. Gilles Bisson: How many junior mining companies would you say existed here in 1990?

Mr. Dave Munier: I don't have those figures handy, but I would say 30, probably.

Mr. Gilles Bisson: And we have about zero now.

Mr. Dave Munier: Well, we have quite a few coming back—

Mr. Gilles Bisson: Which ones?

Mr. Dave Munier: —and part of the reason for that is that other countries have opened up their areas for acquiring land. These juniors are pretty mobile and, if blocked here, they can go to many other parts of the world.

Mr. Gilles Bisson: That's the point that I want you to speak to. In 1990, there were about 30 juniors here in the Timmins area. When things started tightening up, as far as getting money and the regulatory regime, they just picked up and went to Chile and into Africa.

Mr. Dave Munier: Yes, that's right, Gilles. Their heart is really in Canada. They come from Canada. They want to see this country develop, because any development directly impacts their families and their grandchildren. Their heart is here. They don't want to be over there, but if they have to, they'll do it.

In terms of the number of juniors working here, it's far less, maybe, than in the 1990s, but if we just go one step north, up into the Ring of Fire, there are many, many juniors there. They operate out of Timmins and go north from here, so the whole area benefits.

With the present system of staking, as my friend Art, a consulting geologist, was saying, it's like a democracy: It's not the best, but there's nothing better yet to be found, and it's a good system. But the key is that it brings in people at the ground floor, the staking process. They go on to line-cutting and then they go on to getting involved in geophysics, and some of them will go to school and become engineers or geologists. What a training ground, and they're getting paid very, very well for it.

But it's not just that little community; it's all the people who actually benefit from it as well. It's the people in the motels and hotels that are putting up stakers and line-cutters; it's the aircraft, the float people, the

helicopters; it's the little service station that's selling the gas so they can get into that ground.

Mr. Gilles Bisson: So we have a lot of history. I would just say this: John Gammon finally won at the end. You know what I'm talking about.

Mr. Dave Munier: Yes.

Mr. Gilles Bisson: Thank you.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. For the government side, Mr. Brown.

Mr. Michael A. Brown: Thanks, Dave. I appreciate seeing you. I think it's about 10 years, probably, since we last met, on Yonge or Bay Street.

I appreciate what you're saying. The government understands, I think—well, I'm sure—that there is a trade-off that has to be made, or would be made, with map staking. We're not prepared, really, to make that. We understand that there are map-staking regimes at other places in Canada. Our neighbouring province of Quebec does it and I think both Nova Scotia and New Brunswick do it. We understand that what we want to keep are the prospectors and those guys and gals out on the ground, because they provide real economic input. We think that can be done through ensuring that we don't have these large tie-ups of claims through multinational corporations. I think there are ways to do it, and we intend to do that.

We think there is also great opportunity for the prospector who still can map-stake. There's no reason a prospector can't map-stake. We do need your expertise, and that of people like you, out on the ground to prove out whatever seems to be found.

Could you maybe comment on—there's a lot more to this than just wandering through the bush and cutting a few lines here and there. Maybe you could tell the members a little bit about what a prospector really does.

Mr. Dave Munier: Well, before I start on that, I'd say that the prospector's first effort is to stake a claim. He gets acquainted with the bush. Many times, these guys say, "This life is not for me." Maybe staying out and living in the bush, staking ground, it's too hard. It's difficult; the flies are bad. So you eliminate a lot of people who are not genuinely interested in that business, right off the bat.

A prospector typically will go out and look at areas, either through reviewing government files or assessment files, seeing what is prospective. There you'll have records of everybody else's work on that property. You'll have a record kept of what work has been done. He may come up with a new idea and say, "Yes, that deserves a second look." At that point, you may go out and look at the ground before staking, or you may just stake it and start working it.

More often than not, though, these properties end up being nothing. You may turn around, if you're lucky, and sell it to a mining company and get a first-option payment. It eventually comes back to you and you maybe try to sell it again. If you can't, you may leave the property, if you don't have something encouraging coming out of that.

It's building up to these sort of the circumstances, the continual sort of letdown, letdown, letdown, that weeds out the people who are just there for quick dollars, and what you're left with are serious people who have faith that they're going to find something. Those are the key people who stand to be left aside with map staking. It's so critical to have that diverse community of the prospector and the junior companies involved.

1420

They're really going out and working for nothing. It's not costing the government anything. They're bringing in new money from all parts of the world and they're spending it on the ground. We need that diverse group bringing in those huge sums of money from all over the place to explore the land, because the chances of success are so slim in this business that if you just—

Mr. Michael A. Brown: One in 10,000, I think.

Mr. Dave Munier: It's a function, really, of throwing a lot of money at it and doing some good work. But to eliminate that group would be a disaster to the industry. You need that diversity. Healthy mining in this situation is dependent on those three groups working, and right now they're working very well together.

I know in the past the government has argued that there's a bit of saving in introducing map staking, but it's far less than the benefits that are accrued from having that diverse community. One of the reasons why Ontario has been so active in mining is that we have that diverse community and we have access to land. That's why we've done so well: We had competition and competition is what we need. If you eliminate that, you put yourself into the hands of those who are strong enough to be left behind to work, and then you're at the mercy of those people.

The Acting Chair (Mrs. Linda Jeffrey): Thank you. Mr. Ouellette?

Mr. Jerry J. Ouellette: Thank you very much for your presentation.

Maybe you could expand on what, actually, a junior is—because I'm not sure a lot or all of the members understand what a junior is—and then further explain about the first option payments. Or you could talk about how these claims are sold off on a percentage basis, how that works out from a prospector's perspective.

Mr. Dave Munier: I'll start with the prospector. First, you acquire land. You work it, you upgrade it—you hope—to a point where you've now interested a junior company that thinks you've got something that has some merit. They come in, they review it, and if they agree with you, they say, "Well, let's enter into an option agreement."

An option agreement is one in which you set up a series of payments from the time of signing, in which case you would get an initial payment that's guaranteed, and then the payments that would come after that, typically, are after one year, two and three. That gives most companies the right, after they've paid the initial fee, the upfront money, to go in and prospect that ground and work towards eventually owning it. But after the year

is up, they have another payment to make that's been predetermined. If they want to keep working for a second year, they have to make that payment, and then they essentially have renewed the option.

After the second year, if they still like the property, they have to make that following payment. If they make all the payments then they've essentially purchased the option, but that's not the end of it for the prospector because, as I said earlier, the money that they get from the option payments is pretty small. The real money only comes if a mine is found, and that's in the form of a royalty that the prospector would have incorporated into that agreement with the junior. The royalty takes a number of forms, but it could be so many cents per tonne of rock removed from the ground. It could be a net profits type of agreement, where they share in the profits, or better still, it's what they call an NSR, net smelter return. That's favoured, because there are fewer write-offs that a company can make before they dish out your percentage of the profits.

So once again, the junior company is raising funds from all over the world. He's coming in, he's making a deal with me and he's putting money into my pocket that maybe didn't even originate in Canada—or could—and he's working. While he's working, he's cutting lines; he's employing all of us to cut lines, to do geophysics. Then he turns around and he says, "Now we've got some good targets but we have to drill it." So he hires a local driller, presumably, and the driller and his family all benefit from that.

It's a long string of benefits that accrue from someone starting the initial stage of optioning ground to a company. Most companies in themselves have exploration crews, but we're sort of another group that goes out

and looks for these things. The important point is that we've got a nice balance and the present system allows for the prospector and the junior company to flourish. That, in turn, directly benefits our province and ensures there's competition and that more money is left in the communities and the province, which is what we need.

I'll go back to the earlier statement. We in Timmins and the far north, all over the place, when we're staking or line-cutting, we're getting money and it's right from work in our hometown. All these service industries that are with us are making money. You can't get a better system than that: money flowing back into your own community, providing further incentive for a person to go out and say, "Well, maybe I can do this a second time or a third." So that's the important point: that you do not want competition to be removed, and that will be removed if the map staking comes in. You'll have fewer people involved in the exploration business. Fewer people means less money coming in, fewer discoveries, and eventually you'll have a watering down or a petering away of the great mining exploration community we have in Timmins and elsewhere.

The Acting Chair (Mrs. Linda Jeffrey): Thank you, Mr. Munier, for being here.

Thank you, committee. This concludes five days of travel and hearings by the Standing Committee on General Government. We will be reconvening at Queen's Park on September 14 at 2 p.m. for clause-by-clause consideration of Bill 173, An Act to amend the Mining Act. The amendment deadline is September 8 at 5 p.m.

My colleagues and I would like to thank Timmins for their hospitality.

We're adjourned.

The committee adjourned at 1426.

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziatti (Sault Ste. Marie L)

Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mr. Robert Bailey (Sarnia–Lambton PC)
Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)
Mrs. Linda Jeffrey (Brampton–Springdale L)
Mr. Kuldip Kular (Bramalea–Gore–Malton L)
Mr. Rosario Marchese (Trinity–Spadina ND)
Mr. Bill Mauro (Thunder Bay–Atikokan L)
Mrs. Carol Mitchell (Huron–Bruce L)
Mr. David Oraziatti (Sault Ste. Marie L)
Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)
Mr. Michael A. Brown (Algoma–Manitoulin L)
Mr. Vic Dhillon (Brampton West / Brampton-Ouest L)
Mr. Joe Dickson (Ajax–Pickering L)
Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)
Mr. Jerry J. Ouellette (Oshawa PC)
Ms. Leeanna Pendergast (Kitchener–Conestoga L)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. James Charlton, research officer,
Legislative Research Service

CONTENTS

Thursday 13 August 2009

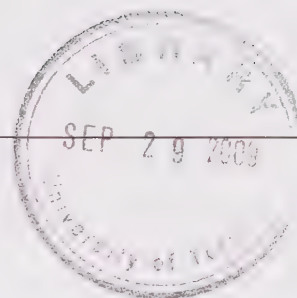
Mining Amendment Act, 2009 , Bill 173, <i>Mr. Gravelle</i> / Loi de 2009 modifiant la Loi sur les mines , projet de loi 173, <i>M. Gravelle</i>	G-967
Far North Act, 2009 , Bill 191, <i>Mrs. Cansfield</i> / Loi de 2009 sur le Grand Nord , projet de loi 191, <i>M^{me} Cansfield</i>	G-967
Timmins Chamber of Commerce.....	G-967
Mr. Rob Galloway	
Porcupine Prospectors and Developers Association.....	G-970
Mr. Kristan Straub	
City of Timmins	G-974
Mr. Michael Doody	
Fort Albany First Nation	G-977
Mr. Chris Metatawabin	
Attawapiskat First Nation	G-980
Chief Theresa Hall	
Mushkegowuk Council	G-983
Grand Chief Stan Louttit	
De Beers Canada.....	G-986
Mr. Jim Gowans	
Mr. Charles Ficner	G-990
CPAWS Wildlands League	G-993
Ms. Anna Baggio	
Ms. Janet Sumner	
Northwatch	G-998
Ms. Brennain Lloyd	
Ottawa Coalition Against Mining Uranium	G-1001
Mr. David Gill	
Mr. Steven Kidd.....	G-1004
Mr. Dave Munier.....	G-1006



G-37

G-37

ISSN 1180-5218



Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Monday 14 September 2009

Journal des débats (Hansard)

Lundi 14 septembre 2009

**Standing Committee on
General Government**

Mining Amendment Act, 2009

**Comité permanent des
affaires gouvernementales**

Loi de 2009 modifiant
la Loi sur les mines

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 14 September 2009

Lundi 14 septembre 2009

The committee met at 1414 in room 151.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Orazietti): Good afternoon, everyone, and welcome to the Standing Committee on General Government to consider clause-by-clause of Bill 173.

The first amendment is proposed by the NDP. Mr. Bisson.

Mr. Gilles Bisson: I move that subsection 1(1) of the Mining Act, as amended by 1(2) of the bill, be amended by adding the following definition:

“‘consultation’ means a process of good faith negotiations by the minister for the purpose of determining whether and how aboriginal interests should be addressed through accommodation.”

The Chair (Mr. David Orazietti): Any debate?

Mr. Gilles Bisson: I just want to see what they have to say first and we'll take it from there. Any comment?

The Chair (Mr. David Orazietti): Mr. Brown?

Mr. Michael A. Brown: Usually, I'd like to hear the reason for doing it.

Mr. Gilles Bisson: Well, as you know, during the committee hearings we heard from many First Nations organizations that came before us and talked about the whole issue of duty to accommodate, and I refer you back to the Chapleau hearing in your riding. We had Randy Kapashesit and others who made, I thought, a fairly elaborate point. What I'm trying to capture in this amendment is to make sure we're in keeping with the duty to accommodate and clearly specify in the bill that that's what this is all about, that at the end of the day we're going to respect that there is a duty to accommodate as set out by the Supreme Court of Canada and that it's entrenched within the legislation to make no grey area around it whatsoever.

Mr. Michael A. Brown: Thank you. Well, I appreciate that. I appreciate the fact that you're trying to clarify the definition of “consultation”; that's essentially what you're trying to do here, I think.

The difficulty is doing that in a way that reflects case law and how the standard is evolving. I don't think either one of us or anybody on this committee would want to presume where that's going to end up at the end of the day, and by inserting what I would consider to be a rather arbitrary definition, I would think that we may do exactly the opposite of what we heard.

The government is most happy to watch the evolution or to participate, actually, in the evolution of the definition of the duty to consult. We think we've moved a long way by putting it in the purpose clause in the beginning here. Therefore, we would like to leave it the way it is. I think the member can appreciate the development of the case law which is occurring across Canadian jurisdictions, not just in this one.

The Chair (Mr. David Orazietti): Further debate?

Mr. Randy Hillier: I'll have to add that we've seen for quite a period of time now conflicts with mining and also confusion as to just what “consultation” means and what is expected out of consultations. I think the third party's amendment to put forth that concept of good faith doesn't denigrate case law; it doesn't denigrate or diminish law. It's establishing what this legislative committee believes and clarifies what this legislative committee believes the intent of the law is.

Practising negotiations in good faith is a noble and honourable expectation. I think that's what we all expect here in this committee when we say there is a process of consultation and a duty to consult. To be in good faith should be the minimum that we're expecting. To put it into words in the legislation clearly identifies to the people who come years and decades after us what we here today expected. I'm in support of the NDP motion to amend.

The Chair (Mr. David Orazietti): Thank you, Mr. Hillier. Further debate, comment?

Mr. Gilles Bisson: Well, Chair, clearly the courts have spoken on the issue that there needs to be, first of all, a duty to consult and accommodate; that's what the precedent says. What we're trying to clarify here is that it's one thing to go out and consult First Nations—in fact, successive governments have gone out and done that. Your government has; the Conservative and the New Democratic governments have gone out and consulted before. Where the rubber meets the road is on the issue of accommodation. What we're trying to do is to clarify that in fact it's not just, “Hi, how are you doing? I thought I'd

come and talk to you,” but it’s also, “Hi, how are you doing? How can I help, and what can we do to make sure we respect that we have not only a duty to consult, but also to try to accommodate First Nations when it comes to the economic activities that will come from mining?”

Again, I just want to say right up front in these hearings that 99% of First Nations want development in their communities, for the same reasons you and I want it in our communities. The problem is that the way the laws are written today, there’s very little in the way of benefit for them. What we’re trying to do here is to set in legislation, as Mr. Hillier said, clearly what this committee was thinking of when we drafted this bill, so that in the end it’s not just that we’re going to go out and talk to people, but that we are going to accommodate them when it comes to whatever comes out of the mining project that’s coming their way.

1420

The Chair (Mr. David Oraziotti): Any further debate? Mr. Hillier.

Mr. Randy Hillier: I’ll just add to that. The committee travelled to listen and have consultation with stakeholder groups, with people. We didn’t go there with a tin ear; we went there to actually listen and have good faith to articulate those justified concerns into amendments to the legislation. I think that’s really what we’re getting at here, demonstrating what we actually expect people in the future to do with this piece of legislation, and that’s to act in good faith.

Adding clarity to legislation is never a bad thing. Clearly identifying expectations is not a bad thing. The more we can diminish the role of interpretations down the road, the less conflict there will be down the road.

The Chair (Mr. David Oraziotti): Any further debate? Mr. Brown.

Mr. Michael A. Brown: The government isn’t disagreeing that we need to have all these consultations and that we have to move not only with the letter of the law but with the spirit of the law as it unfolds. We think this doesn’t add anything to it, and we do think that it may in fact detract from the ability of us, as the province of Ontario and the government, to react in a way that is in the interests of First Nations and all Ontarians. I don’t understand your reading being any different than what we already have, and in fact may restrict it, so I can’t support that.

The Chair (Mr. David Oraziotti): Further debate? Mr. Hillier.

Mr. Randy Hillier: You said, “This may restrict.” I’d like to know how. How would including “means a process of good faith negotiations”—when you make a statement, you have to be able to justify it and give some evidence as to why this would indeed possibly restrict the government and restrict the First Nations. How?

Mr. Michael A. Brown: First, the government needs to act in good faith in any event. That’s a given.

Mr. Randy Hillier: Well, that’s an expectation.

Mr. Michael A. Brown: The second thing, if you read the amendment, it that says “whether” there will be an

accommodation. Who knows how this will evolve as we go through time? Maybe that won’t be a question as we get further along. I think we’ve got it right, and that raising this issue and putting it in the purpose clause—that we are going to deal with issues with our First Nations and aboriginal communities—is important, and we have included that intentionally in the purpose clause. You will not find, I don’t believe, in any mining legislation in the world, that this clause exists, where we definitively as a government talk about the aboriginal interests. I think we’ve moved a long way and I think we’ve done it in correct form.

Mr. Randy Hillier: I still didn’t hear why or how that is going to restrict. You’ve got some suppositions but you have not identified at all how—it sounds more like a red herring: “means a process of good faith negotiations ... for the purpose of determining whether and how aboriginal interests should be addressed through accommodation.” That’s a pretty reasonable statement. I think it gives clear indication to the courts, clear indication to the stakeholders, clear indication to the public and to the mining interest and clear indication to everybody what it is that this Legislature expects from a new, up-to-date, reformed Mining Act that is going to allow for prosperity in the north and in this country.

I’ve heard some excuses, but I haven’t heard any reasons yet.

Mr. Gilles Bisson: I think Mr. Hillier hit the nail on the head. I fail to see how this would limit or make worse the condition as set out in the current drafted bill.

Just to make it clear: You have a purpose clause and a definition clause in every bill. I grant you that in the purpose clause you have language that deals, to a certain extent, with the issue of what the rights of First Nations are. But we need to have a definition of what “consultation” means. You know as well as I do that we’ve had all kinds of situations in mining projects across the north where governments have gone in and said, “We’re going in and we’re talking to people,” and the First Nation itself says, “Well, sorry, if you call that consultation, you’ve got something else coming.”

What we’re trying to do is clearly put in the bill that the government has a responsibility to go out and consult and give a definition of what “consultation” means, which means that in the end you’re not just going to talk to somebody, but that you’re going to try to find some way to accommodate the need.

Clearly that happens in almost every other situation in mining. If they go into your riding or into my riding, in a non-aboriginal community, and there’s going to be a mining project, you can bet your bottom dollar that the city of Timmins is going to benefit, or in your case the town of Espanola or Elliot Lake. But that’s not the case when it comes to First Nations. We want to clearly say what the definition of “consultation” should be so that there’s no ambiguity about it.

The Chair (Mr. David Oraziotti): Okay. Any further debate? Seeing none, all in favour—

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): Recorded vote—

Mr. Randy Hillier: Excuse me. I'd like to call for a 20-minute recess before the vote.

Mr. Gilles Bisson: Sure.

The Chair (Mr. David Oraziotti): The committee is in recess for 20 minutes.

The committee recessed from 1427 to 1447.

The Chair (Mr. David Oraziotti): The committee's in session. A recorded vote has been called for.

Ayes

Bisson, Hillier.

Nays

Brown, Brownell, Kular, Mauro, Mitchell.

The Chair (Mr. David Oraziotti): That motion's lost.

Second motion, an NDP motion: Mr. Bisson.

Mr. Gilles Bisson: I move that the definition of "map staking" in subsection 1(1) of the Mining Act, as set out in subsection 1(5) of the bill, be struck out.

The rationale behind that is fairly simple. I think you've heard from numerous people in the exploration business in our hearings that—first, we understand why the government wants to introduce map staking. They see this as a way of being able to get away from the issue of how you give people the ability to stake a claim without any kind of destruction on the ground, and at the same time removing the difficulty of how you deal with that when it comes to notification of First Nations. The problem is that by moving to map staking, we're throwing away the baby with the bathwater.

If we have map staking, two things are going to happen. First of all, we're going to allow mining interests to—rather than do geological work on the ground in order to keep the claim current, we're going to allow payment in lieu. If you allow payment in lieu, it's going to mean that there's going to be no need to do any kind of geological work or geophysical work on that claim, which means to say that First Nations and others are going to be deprived of that work because that's typically work that's done on the ground by people who live there, and who see that as not only a way of life but, quite frankly, their living. But the other thing is, it's going to really take away from the geological database that we've managed to build here in Ontario for years. One of the things that happens is that if I stake a claim, I have to, by law, do at least I think \$400 of work on that claim every year, which means to say that physically I have to get out there to do something. So it forces you to go out and do something to see what's on that ground and to add that information to the geological database that we have in Ontario, which is second to none.

If we move to map staking, if we go down that route, we're going to do two things. One is, you're going to allow people to not do any physical work on the claim to

keep it and just do a payment in lieu, which means you're going to have less geological work done. And number two is, you're really going to give the larger operators the ability to control more of the ground. I think that, in the end, is a wrong thing to do, because when you really look at the history of mining, the big mines across the north have been found by whom? They've been found by individual prospectors. Who developed them is a whole other question: It's the De Beers, the Placer Domes, the Norandas, the Falconbridges and the Incos. They're the ones that have gone out and developed the mines and brought them into production. But they were found by people like Mr. Larche, Mr. McKinnon, and a whole bunch of other prospectors like Benny Hollinger and Mr. Jamieson, who were people who were on the ground doing that kind of work. I think if you move to map staking, you're going to be eliminating a lot of those individual prospectors who, at the end, I think, have been the backbone to this industry.

So clearly we've heard from people in the industry. If you're the mining company, you like this, because it gives you an ability to hold more land and not have to do a heck of a lot of work to keep it. But if you're a prospector, I think this is bad news and I would ask the government to reconsider.

1450

The Chair (Mr. David Oraziotti): Further debate? Mr. Brown.

Mr. Michael A. Brown: You describe it exactly right: The purpose of your amendment is to eliminate map staking. It has nothing to do with an ongoing claim. You can stake a claim and then the work must continue as you described, but it has nothing to do with the staking. So you're mixing the two issues.

The major mining jurisdictions in Canada already have map staking: British Columbia, Quebec and Newfoundland use map staking. This brings Ontario into the 21st century and permits the independent prospector to do everything that a large major could do. This is supported by the Ontario Mining Association, it's supported by private landowners who may not want a prospector to be on their property, and it's supported by many First Nations who do not want prospectors on their traditional lands. It is supported by a great number of people. It only makes sense, and I urge the member not to confuse the regime of the Mining Act to keep mining claims current. That is totally a separate, independent issue.

So we're talking about map staking, which just means you can use coordinates on the map rather than to place the lines and that sort of thing, which can still be done. But anyway, I just do not think that the member wants to take us back to the 18th century; I think he wants to move us into the 21st. That's what we're going to do.

The Chair (Mr. David Oraziotti): Further comment? Mr. Bisson.

Mr. Gilles Bisson: First of all, I hear what you're saying, that the payment in lieu is a separate issue, and I have an amendment that speaks to that. I respect what you're saying, but I'm laying it out that the problem with

map staking is that it's going to be a lot easier for a larger company to gobble up more of the staking ground. You could end up in a situation where somebody sitting in an office somewhere in Rio de Janeiro, or wherever it might be, decides that they're going to stake a number of claims on map, knowing that in the end, the act also contemplates payment in lieu, which means to say that there's an incentive to stake and hold a whole bunch of ground, because it wouldn't be very expensive to do for one of the larger companies. So from the perspective of what I think is healthy in the mining industry—the word is competition—I think it's far better to have more people on the ground doing physical work by getting access to the ground to see what's there, so that in the end we're able to get the kind of interest that we've seen in this province.

To your point that you think I'm trying to bring us back to the 17th or the 18th century, as much as I'm a reader of history—and you probably saw the latest books on my shelf, because they're about that time—it's not that at all. Ontario's done quite well. We're the prime mining area in Canada. Ontario has far more mining than anybody else, not only because of the geology of the province of Ontario, but because of, quite frankly, the industry that has managed to blossom here as a result of the current Mining Act. And I think the current Mining Act had it right when it said that there is a need for people to physically stake a claim.

The issue becomes—and this is where I'm prepared to meet the government partway—how do you do this in a way that doesn't interfere with a private landowner, as is the case with people who have come from your area, Mr. Hillier, and how do you make sure that First Nations don't find out by way of the helicopter flying overhead that ground has been staked on a particular reserve? We can deal with that—and I have successive amendments that deal with that—so that we're clear about what can happen when you stake a claim, so that we don't disrupt the private property owner and we give First Nations comfort. I do believe, however, moving to map staking, at the end of the day, is not going to be a good thing for the mining industry here in Ontario.

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Yes, I have to add a few comments on this, because I think our position is very close to Gilles's. Where the dangers—and we heard it very clearly from the prospectors: the Porcupine prospectors, the Boreal forest prospectors. There were a number of them during those committees hearings. The root of their concern was this payment in lieu of assessment, in conjunction with map staking. I think that's where the big concern was. If we have that payment in lieu of actual work, this map staking will not work in the north. It will be such a regulatory incentive for the larger exploration firms, and such a disincentive for the smaller prospectors—we are going to see a significant reduction in actual exploration work done if that payment in lieu is continued on.

I've looked through, and maybe I've missed it in one of the government motions, but I have not seen a government motion to eliminate or remove or repeal that payment in lieu.

So, if payment in lieu remains in this bill, then there's no way we can accept map staking as well. Like I said, we all heard that so clearly through these committees. Again, we went there in good faith. We went there to listen to legitimate and justifiable concerns. There is map staking in other parts of the country, but to have both those components—payment in lieu and map staking—we're moving into some territory that is new. We're moving into some territory which is going to be exceptionally harmful for the real backbone of our mining in this province: the smaller prospectors.

Somebody from the government side, did I miss that motion in here, that payment in lieu is being offered up to be struck out of the bill?

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead and respond.

Mr. Michael A. Brown: I want to assure the members that we understand very, very clearly that prospecting in the province of Ontario is the heart of the mineral industry—if you can't find it, you can't develop it—and that independent prospectors do a fabulous job for us, very economically, competing with each other to stake claims and bring them, hopefully, to fruition, to sell them to a junior and then on and on.

What I'm hearing, I guess, from the members—I'm not sure I'm hearing it—am I hearing that you're in favour of map staking?

Mr. Gilles Bisson: No.

Mr. Michael A. Brown: No, Mr. Bisson isn't. Mr. Hillier may be, if we can deal with the payment-in-lieu issue as we go through.

I think it is incumbent upon the government, and the government's intention is to phase in map staking across the province to make sure that majors don't tie up all the land or create undue competitive advantage versus the independent prospector. We understand that this isn't going to be an overnight thing and that we're going to work very hard to get it right.

But the second part of that is, we understand that map staking is the 21st century, and for a whole lot of reasons we need to do that to address some of the issues that Mr. Bisson pointed out. We need to do that to avoid conflicts on traditional aboriginal land—not reserves, but you can't be prospecting on-reserve anyway. Also, the private landowner does not want to wake up some morning and find Mike Brown tromping around, blazing a line.

I think those two issues are important. In the world of the 21st century, map staking is totally necessary for us to be a competitive force in mining.

The Chair (Mr. David Oraziotti): Mr. Bisson.

Mr. Gilles Bisson: Just for the record I want to say to the member, the parliamentary assistant, you're saying that prospectors support this. Quite to the contrary, in presentation after presentation that we got at this committee, in the various places that we went, prospectors

came before this committee and were very adamant that they're not in support of prospector—I think of the last hearing date we had in Timmins, when Dave Munier was there. We had Robert Calhoun. I'm just trying to think of some of the people who came to committee. They're very clear about this issue. They see the move to map staking as a shift, moving the balance of the ability to stake claims from the individual prospector to larger mining companies.

The lessening of the competition that exists by prospectors getting on the ground, I think, is not going to be good for Ontario when it comes to the ability to find new mines. I look at De Beers as a good example. That particular project is one that was found by an individual geologist who was doing some work. Yes, De Beers were the ones who clearly spent all the money to bring that project from, "Hmm, maybe there's something there," to "Yes, we've got a diamond mine." But it was the ability of the individual to go out on the ground that made the initial finding that led to everything else that happened after.

1500

So I think what you really want to be able to do in an area like northern Ontario, because the geology is so interesting here, is that you have to provide that incentive for the individual to get into the bush to do the work that needs to be done, so that they can find the anomalies that lead eventually to a find such as we saw at Hemlo and in a whole bunch of other properties out there.

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: I just have to add: You mentioned that it is the government's intent not to allow land to be tied up by the majors. If that's so, then why isn't it incorporated in the legislation? Why are we not seeing a government amendment to strike down the payment in lieu? A whole framework is being set up that will allow exploration and claims to be skewed to one segment of the marketplace: the majors.

I also have to say—I don't know if you were at a different committee hearing—I did not hear any land-owners around the province supporting map staking as well. I heard lots of discussion, but they were not in support of map staking from what I heard. The prospectors are clearly very concerned, and justifiably so. We are setting up conditions where a few companies can lay claim to vast tracts of this province and then not actually employ people to build up that geological database but just hold it in reserve for their own purposes.

If the government intent is not to allow lands to be tied up, as you said, I would say to you: What amendment have you put forth that would indeed substantiate your claim? What amendment are you putting in here that is going to prevent a few from owning claims on vast tracts of land? I have not seen any of your amendments. Intent is one thing, but we all know where that road goes if it's not clearly spelled out in the Legislature what the expectations are, and I have not seen it.

My own view is that if there weren't the payment-in-lieu portion in this bill, map staking on its own would

allow for greater productivity as long as we keep the component that the work on the ground has to be done; otherwise, it's just a tax. This payment in lieu will become a tax and a part of the cost of doing business to restrict business. I don't see how you can see it any other way.

The Chair (Mr. David Oraziotti): Further comment? Seeing none—

Mr. Gilles Bisson: He was just about to speak. I wanted to add to that, but if you were going to say something—

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: If we throw map staking out and say, "We don't want to do that; we want to go back to the 19th century," you can still, with a payment in lieu, tie up huge tracts of land. Maybe some of you aren't familiar with the great rushes of prospecting to stake land when there's a rumour or a find or potential find or all those interesting kinds of things you find in the mining community. The prospecting goes wild, the claims get staked and there's lots of activity around.

In truth, I don't really see what the difference would be. You know what map staking is: It doesn't mean that nobody's on the ground; it means that you're not going to blaze lines and put in posts. That's what it means. Instead of doing that, you use your GPS and do it on a computer; that is the only difference. People will not stake land if they aren't going to bring it, or at least have the potential to bring it—if somebody could help me with the exact word. You have to do, and will still have to do, the work that's prescribed in the Mining Act to keep that claim in force.

Mr. Randy Hillier: No, you won't.

Mr. Michael A. Brown: Yes, you will; otherwise, it will be gone. We can deal with the other issue when we get to it, but at the moment, we're talking about, "Do you believe that you can do this on a map, or do you actually have to go out and place the lines in the ground?" That's the difference.

The Chair (Mr. David Oraziotti): Mr. Bisson, and then Mr. Hillier.

Mr. Gilles Bisson: So what you're saying is that if we go to map staking, somehow or other—I didn't quite follow your argument—that was going to lead to more activity, and I'm arguing that it's completely the contrary.

If you look at the major staking rushes we've had in northern Ontario—Texasgulf, Hemlo, whatever they've been—what has happened is that an individual has basically gone in and staked a claim on the basis of some sense that there may be something there. Physically, they're not able to stake all the ground in the area, because that would be a huge undertaking. So it allows other people to come in and do some staking themselves in order to augment the overall amount of work being done to actually find the mine.

In the case of Kidd Creek or Hemlo, it wasn't one company that staked all the ground; it was numerous

people, including companies, that staked. If you go to map staking, this is what would happen. If it's a Hemlo, what would end up happening is that presumably you would hire somebody like a John Larche or a Don McKinnon to go out and not even stake the ground but do some geological work, and then the company would sit back somewhere and say, "Okay, here's a map and I'm going to take all these unregistered claims. I'm taking them all, and I'm prepared to pay the fee to register them, and I'm prepared to pay the \$400 in lieu for the next five or 10 years." You'd figure out the math on that and say you're able to do it. But the point is, they'd be able to lock up all of that ground. What I argue is that that's the wrong thing, because what it does is prevent other people from going into the ground and adding to the geological work that's done when you prospect and eventually do exploration, because the sum total is what really builds the database.

What happened in the case of Hemlo is that you had John Larche and McKinnon go in, but you had other people who went in there who had previous claims and other people who staked claims, and as a result, the overall added to the sum. It was the same thing at Kidd Creek. I understand there are some claims that are already staked and we're not going to affect those, but what you could end up with is somebody sitting back in an office tower in Timmins or Thunder Bay or Toronto or Rio de Janeiro who is going to say, "Here is all the unstaked ground in this particular area. I'm going to stake it all on a map," without ever physically sending somebody out there to do the actual staking, which means it's going to lead to less activity on the ground in the long run.

The worst part is, it's going to give the larger corporation more say to freeze up land and not do the geological work in the future that needs to be done to add to the Ontario geological database. Why would we do that? Competition is good. I believe that what has driven the mining industry to successes here in Ontario over the last 100 and some odd years is that we have a very competitive entrepreneurial spirit within the prospecting community that has allowed us to identify much in the way of mineral potential in this province and to bring those mines into production later with mining companies. Why would we want to get rid of that?

The Chair (Mr. David Oraziotti): Mr. Hillier, do you have a comment?

Mr. Randy Hillier: Once again, is the government prepared to bring forth a motion afterward to strike out this payment in lieu? That is where the real crux comes into it.

Mr. Gilles Bisson: That's only part of it.

Mr. Randy Hillier: What you're doing is opening up the floodgates all at once. You're not putting any checks and balances in there at all. You're going with map staking and payment in lieu. That is just going to kill competition and put a lopsided environment in mining in this province, and that's why prospectors are so concerned about it. I think it's incumbent on the government

side to address that and make sure that this bill should be—one of the purposes of this amendment is to minimize conflicts and, if we look at the first part of the bill, to encourage mining. These things that you're doing are not achieving that. They're diametrically opposed to the purpose that you've already stated. We need to get this right. We know that this bill, once it is amended—I think the last time it was amended was 1990, once every generation—

Mr. Michael A. Brown: I was here then.

Mr. Randy Hillier: Well, maybe some people have overstayed their time. I don't know.

Laughter.

Mr. Gilles Bisson: Hang on, be careful.

Mr. Randy Hillier: I was just being a little facetious.

We know that it's a lengthy period of time for major reforms to the Mining Act. We really need to ensure that—I'll just put it this way: If we don't get it right, if we still have the conflicts, if we lose out our prosperity on mining, what have we achieved? We know that any government, whoever comes down, will say, "Listen, the mining bill's been reformed. We're not going to open it up again." We need to get this thing right. If we're not going to take out that payment in lieu then I'll have to support the third party's motion, here. The two of those are a double-barrelled killer to our prospectors and to mining in this province.

The Chair (Mr. David Oraziotti): Seeing any further debate? None? Go ahead, Mr. Bisson.

Mr. Gilles Bisson: I don't want to hold this thing up. It's pretty clear that the government's going to vote against this, but I just, for the record, really want the government to think about this. What we've had in Ontario is the most successful mining industry in Canada. One of the reasons that we've been so successful—yes, the geology obviously has a lot to do with it, but so do Quebec and British Columbia have interesting geology, when it comes to mining. But Ontario has benefited because we've managed to attract the best of the best here in this province in large numbers, which has led to the type of activity that we've had that has led to the finding of mines such as the Victor diamond pipe, the Hemlo gold mine, the Red Lakes and others across Ontario. I just think us turning our backs on what has served Ontario well at the end of the day is a disservice to this province. I would ask the government to consider this and I would ask for a 20-minute recess.

The Chair (Mr. David Oraziotti): Further debate? All those in favour—

Mr. Gilles Bisson: Oh, I asked for a 20-minute recess.

The Chair (Mr. David Oraziotti): Is there any further debate? No? Now it's time to put the question. All those in favour of the—

Mr. Randy Hillier: I'll call for a recess.

The Chair (Mr. David Oraziotti): Mr. Bisson called for it. You have up to 20 minutes, Mr. Bisson. Would you like the full 20 minutes?

Mr. Gilles Bisson: Yes, I'm calling for a recess. I thought I was doing that—

The Chair (Mr. David Oraziotti): Yes, I'm asking you, would you like the full 20 minutes?

Mr. Gilles Bisson: Yes, the full 20 minutes please, so the government can go back and reconsider this.

The Chair (Mr. David Oraziotti): Okay. Thank you.
The committee recessed from 1513 to 1533.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Ayes

Bailey, Bisson, Hillier.

Nays

Brown, Brownell, Kular, Mitchell.

The Chair (Mr. David Oraziotti): The motion is lost. Any debate on section 1?

Mr. Gilles Bisson: Again, in regard to the definitions, I think it's clear we're missing an opportunity to create clarity about what it is that we want to do with this bill. I think there are a couple of things that are foremost. The first part is the issue of duty to consult and accommodate. I think we've got to clarify in the definitions what consultation is and what it leads to, which is accommodation of what those economic interests might be.

The other thing, with the map staking, I've made the point. I just think it's unfortunate that the government didn't support either one of those. I will vote against this particular section.

The Chair (Mr. David Oraziotti): Further debate on section 1?

Mr. Michael A. Brown: I move section 1.

The Chair (Mr. David Oraziotti): All those in favour of section 1? Opposed? Section 1 is carried. Thank you.

Section 2, NDP motion 3.

Mr. Gilles Bisson: I move that section 2 of the Mining Act, as set out in section 2 of the bill, be struck out and the following substituted:

"Purpose

"2.(1) The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult and accommodate, and to minimize the impact of these activities on public health and safety and the environment.

"Aboriginal consultation

"(2) In order to fulfill the purposes of this act, the government of Ontario shall provide such financial assistance as is necessary in order to enable aboriginal groups to participate fully in any consultations conducted under this act."

So just a quick explanation—sorry.

The Chair (Mr. David Oraziotti): Sorry, Mr. Bisson. Once you've read the motion, because it does involve the expenditure of dollars—standing order 57 states the

following, and the motion is being ruled out of order; I'll read it:

"Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor"—

Mr. Gilles Bisson: Okay. Then, Mr. Chair, I would just—I think it's unfortunate—strike out (2) and leave in the purpose clause, 2. That keeps it in order.

The Chair (Mr. David Oraziotti): Do you want to amend your amendment?

Mr. Gilles Bisson: Yes, and I'll speak to it after. The amended motion would only read:

"I move that section 2 of the Mining Act, as set out in section 2 of the bill, be struck out and the following substituted:

"Purpose

"2.(1) The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult and accommodate, and to minimize the impact of these activities on public health and safety and the environment."

The Chair (Mr. David Oraziotti): Okay. Further debate, Mr. Bisson?

Mr. Gilles Bisson: Just to the aboriginal consultation: I obviously was trying to get that in there somewhere and I thought we might run across this problem. Many of the First Nations that came before us said that part of the difficulty for them is that there is a lack of capacity in many communities to deal with mining, what it means, what we should negotiate, what it involves, because there isn't the expertise in mining in many of these communities. So they had asked to have an amendment to the bill that deals with making sure the crown provides some dollars for First Nations to deal with having the expertise in those communities, to develop their own expertise, so they can properly negotiate.

1540

I'm not happy, but I respect the Chair's ruling that that is out of order, so I will not speak to that particular first amendment.

Now we'll deal with the amendment to the amendment, and that is the duty to consult and accommodate. If you notice, Mr. Brown, basically what I've done is taken what is in your purpose clause and added at the end of the sentence, "the duty to consult," the words "and accommodate." I think it's fairly clear what I'm trying to do here. We see the crown's responsibility as not only (1) to consult but also (2) to accommodate. There is an omission in the act as written that doesn't provide for accommodation, so we're asking for that to be put in.

The Chair (Mr. David Oraziotti): Any further debate? Mr. Brown.

Mr. Michael A. Brown: We agree. The difference here is that you've added "to accommodate" into the

clause. Accommodation, where appropriate, has been recognized by the courts as included in the concept of “duty to consult.” The language proposed by the government is consistent with other legislation. Process and requirements will be spelled out in regulations.

With respect to funding, the government has reaffirmed its commitment to resource benefits sharing with aboriginal communities by setting aside \$30 million for this initiative.

The Ontario government and aboriginal communities will continue to discuss what a comprehensive resource benefits sharing system should look like. The 2009 Ontario budget announced \$40 million over three years for the Mining Act initiative.

I know that isn’t directly what your amendment speaks to, but it should help to put some context around it.

The Chair (Mr. David Oraziotti): Mr. Bisson?

Mr. Gilles Bisson: I’ll let him go first.

The Chair (Mr. David Oraziotti): All right. We’ll come back to you, then. Mr. Hillier, go ahead.

Mr. Randy Hillier: Thank you very much. I can see why the third party put forth that subsection (2), which is now out. But it does speak to the government side mentioning the resource sharing benefit and the millions of dollars that are included with it but it does not make up part of this act; it’s allocated in the budget. It has to be spoken to, I think, just to add some context and some clarity here.

The official opposition also has a motion with the same clause. My concern here is that we are singling out one community for additional—or reinforcing one community’s place in the duty to consult and accommodate. We heard it throughout the north. We heard municipalities complaining that they do not have a voice or their will and their concerns are not addressed by this bill. We heard from First Nations that they are not satisfied with this bill. We heard it from private landowners and we heard it from prospectors. Everybody has not been addressed. I would say very few people have been addressed with this bill.

Although I have all the regard for our First Nations and aboriginal communities, there are more people in this province as well who need to be included in the discussion and the duty to consult and accommodate. We heard that throughout those committee hearings. That’s why the official opposition’s amendment is slightly different, that we all have constitutional protection and we all have expectations of fair and just consultation.

This bill doesn’t cut it. It excludes many others. It puts one community in a higher regard than others. That’s why our motion from the opposition side—that’s 4.1—looks for making some changes here as well.

Resource funding—because the government side has brought it up—that should be included in this bill: a mechanism by which resource revenues are shared with our community partners, our municipalities, our First Nations.

Once again, the purpose of this bill has been clearly identified to minimize or reduce or mitigate conflicts be-

tween mining and private landowners and communities. It’s not doing it. I would really like the government to reflect on those things: that we need to broaden this out, that everybody in this province needs to be consulted and treated fairly.

I understand the third party’s idea on this, to add some clarity with regard to aboriginal First Nations communities. Those are included in the Constitution. I’d like you to consider broadening it out for everybody else, all our municipalities; that there is a mechanism within this bill so that municipalities have a say in what goes on in their communities.

The Chair (Mr. David Oraziotti): Further comment?

Mr. Gilles Bisson: I heard the explanation of the parliamentary assistant, and I’m greatly disappointed. What’s clear is that we’ve had some good stories out there, good examples of what can happen. In the case of Attawapiskat—but even that was difficult. It took the better part of eight years to negotiate an IBA, it took the better part of eight years to get the community to comprehend what this mining project was all about, and they’ve had to do that all on their own.

That’s really the crux of the problem: that the province, both under this government and previous governments, has not done a heck of a lot to work with First Nations in order to properly safeguard their interests and, number two, provide them with the mechanisms to be able to go out and negotiate meaningful impact benefit agreements that would lead to some economic prosperity for their band members.

What I’m attempting to do in this particular amendment is to make sure that we’re clear and consistent with the Constitution under section 35, which says that it’s not only a duty to consult but it’s also a duty to accommodate. What you have inside your amendment—the bill as written—is only part of what the Constitution calls for under section 35, and that’s the duty to consult. You don’t have the word “accommodate.”

My argument is a pretty simple one. It’s one thing to consult; it’s quite another thing to be able to accommodate. You could, under this legislation, as you’re doing, propose that the government shall consult, but where does that lead if there’s no requirement in the bill that you have to accommodate at the end?

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I’ll try it again. For better or worse, I’m not a lawyer, but I am told that accommodation, where appropriate, has been recognized by the courts as included in the concept of “duty to consult.” It is already there.

To my friend from the Conservative Party, I just should point out that the clause here talks about the “affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and to minimize the impact of these activities on public health and safety and the environment.” So that clearly is a broader perspective in the last half of that. I’m going to speak to that more in a government motion later.

I think your amendment, to be fair, Mr. Bisson, doesn't help because of the way the courts see these issues and we should leave it where it is.

1550

The Chair (Mr. David Oraziotti): Further debate? Mr. Bisson.

Mr. Gilles Bisson: I fail to see how it doesn't help, because what the amendment says is not only will the crown have a duty to consult the First Nations, it will also have a duty to accommodate. What I'm trying to do in the legislation is clearly spell out that there is a requirement to accommodate as well as consult. Your amendment basically says that you shall consult. It will be left, then, to the courts to decide if accommodation even plays into this, because that's the only redress that the First Nations will have. Where does that leave us? It's going to lead us to more confrontation when it comes to mining in places like KI and others. It's going to provide less clarity for the mining sector to do the investment.

I think if everybody knows what the rules are going in and the crown clearly takes its responsibility, at the end of the day we're much further ahead than leaving the system as is, and that's basically what you're doing. All you're doing under your section 2 is recognizing, in part, what the courts have ruled on when it came to the issue of the duty to consult, and you're cherry-picking the part that you want and leaving out the part that you don't.

I ask again, will you reconsider and allow the duty to accommodate to stand with the duty to consult?

Mr. Michael A. Brown: We believe it already exists.

Mr. Gilles Bisson: Well, it's not my turn, so—

The Chair (Mr. David Oraziotti): We're out of time. Mr. Hillier, go ahead.

Mr. Randy Hillier: We have a Constitution, and it clearly defines jurisdictions. Provincial legislation can't contravene what's in the Constitution. If we try to do that, it won't be long before the courts strike down that legislation. We've seen that in the past.

What I'm getting at here is—we've got some nice-sounding words in the government bill. We've got the "duty to consult," and we've got all the nice pacifying words.

I'll just reiterate what the Attawapiskat nation said in the committee with regard to Bill 173: Bill 173 is a flawed, insulting regulatory mess. That's what they called it. Those are the words from Attawapiskat.

We're talking about the purpose here. We can see what's missing, and I've talked about it earlier. This bill's purpose is to minimize and eliminate conflicts. It's not getting there. It's not anywhere near it. As far as the third parties, they're trying to clearly spell out that accommodation, because that was also identified as a huge problem on the financial side of being able to engage in this regulatory mess that has been created and that is getting worse with Bill 173. So it's unfortunate that that secondary part is off the table, but it's something I would like the government side to very much consider—how to fix the problems in mining, not exacerbate them.

The Chair (Mr. David Oraziotti): Mr. Bisson?

Mr. Gilles Bisson: The parliamentary assistant says that he believes the duty to accommodate already exists. Well, if you believe that it already exists, put it in the legislation. Why not? If your argument to me—and I'll take it at face value—is that the duties to consult and to accommodate already exist as is, and you've already put into the bill the duty to consult, why not go to the duty to accommodate, as well? If you're saying it already exists, make it clear.

The Chair (Mr. David Oraziotti): Further debate?

Mr. Gilles Bisson: Put me back on. I'm waiting for a response.

Mr. Michael A. Brown: I'll repeat myself for the fourth time, I think. Accommodation where appropriate has been recognized by the courts as included in "duty to consult."

Mr. Gilles Bisson: This is interesting. The plot thickens, as they say in the movies. Now you're saying—

Mr. Michael A. Brown: It's the same thing I've said all along.

Mr. Gilles Bisson: Let me finish. Now you're saying what you said at the beginning, which is that you believe this right already exists; you've added to that the words "where appropriate." But clearly what we heard from the mining industry, from First Nations, from everyone, is that we need to provide clarity in this industry. One of the things that you really have to have is "What is my responsibility as a prospector? What's my responsibility as a mining exploration developer? What is it that I have to do to be able to bring a project to fruition?" Part of the difficulty we have is that a lot of the people in the mining industry are unclear when it comes to what their responsibilities are when it comes to First Nations, and if they're so lucky as to find a property that has mineral potential, then they're left alone to navigate the process of negotiating an impact benefit agreement so that they can get the go-ahead with the First Nations to go forward. So it makes it very difficult, I believe, for the mining sector to move forward if the rules are not clear.

If the province is saying—and I take you at face value—that it is the belief of this government that there is a duty to consult that must be respected, and there is with that a duty to not only consult but to accommodate, then I say, well, put it in the legislation where appropriate. I don't care. Put it in the legislation. It will be clear, so that if I'm an outside player into the jurisdiction or I'm somebody in Ontario who has a property that I want to bring forward to exploration and eventually into development, I clearly understand that I have a responsibility, and that responsibility does not just include for me to talk with the First Nation, but it also includes my getting an agreement when it comes to an IBA. Because currently, we don't have that.

I went through this in the Attawapiskat situation for the better part of eight years. It was a very tough process for everyone: It was tough for the First Nation, it was tough for De Beers and it was tough for everybody else who was involved in trying to make it happen. De Beers

made a decision early on—and you heard the president of De Beers tell us that in Timmins—that they would not bring that project into development unless they had the agreement of the First Nation. So they were left on their own to spend tens of millions of dollars to negotiate an IBA. I don't think that's fair. I don't think that every mining company is capable of doing that. I take my hat off to De Beers for having done that, but even then it's still been difficult, because you're aware of some of the ramifications that came out of that.

But what you need to have is clarity of what the rules are for the industry and comfort on the part of the First Nations and others to understand that if I'm a property owner, private or otherwise—a private property owner, a municipality or a First Nation—here's what's expected on the part of the mining industry to be able to move forward; this is what the rules of the game are. I think this bill doesn't do that.

Mr. Michael A. Brown: I can't say anything but we disagree.

Mr. Gilles Bisson: Well, then, Mr. Hillier probably has something to say.

Mr. Randy Hillier: We'll leave it for the next one.

The Chair (Mr. David Orazietti): Okay. No further debate?

Mr. Randy Hillier: I'll call for a 20-minute recess.

The Chair (Mr. David Orazietti): A 20-minute recess has been called for.

Mr. Gilles Bisson: I think Mr. Miller had something.

Mr. Randy Hillier: Oh, you want to—

Mr. Paul Miller: It's just a quick question.

The Chair (Mr. David Orazietti): He's called for the 20-minute recess. We're back at 4:20.

The committee recessed from 1558 to 1618.

The Chair (Mr. David Orazietti): Okay. We'll proceed with the vote on motion number 3, which is the replacement motion from Mr. Bisson that has the section requesting money stricken from that original motion. All those in favour of NDP motion number 3?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): The recorded vote had to be asked for before the recess.

Mr. Gilles Bisson: I thought I did. Okay, fine, go ahead.

The Chair (Mr. David Orazietti): All those in favour? Opposed? The motion's lost.

Government motion number 4. Mr. Brown.

Mr. Michael A. Brown: I move that section 2 of the Mining Act, as set out in section 2 of the bill, be struck out and the following substituted:

"Purpose

"2. The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, in a manner consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult, and in a manner that minimizes the impact of these activities on public health and safety and the environment."

Just a brief explanation: The amendment reflects a minor wording change that reflects the environmental and public health and safety considerations, similar to the considerations of aboriginal and treaty rights. Both clauses now are introduced by similar language, "in a manner"—not a major change.

The Chair (Mr. David Orazietti): Any debate? Mr. Bisson?

Mr. Gilles Bisson: I'm just reading the amendment. This replaces what's on page 2. I'm trying to look at what the actual difference is. Maybe you can point me to it.

Mr. Michael A. Brown: If you just look in the section before, "public health and safety and the environment," it says, "in a manner." It just makes the two—aboriginal rights, and health and safety—addressed in the same way. It's more of a grammatical change than anything.

Mr. Gilles Bisson: Yes, I see it. I just—do you have comments? I just want to read it before I go forward.

The Chair (Mr. David Orazietti): I'll worry about Mr. Hillier's comments. I'm just—

Mr. Gilles Bisson: Well, I just wonder. I look at this and it seems to downplay environmental protection. That's the way I read it. Does this not, in your view, give you the sense that this would actually downplay some of the environmental protection?

Mr. Michael A. Brown: No, I think it just makes the section consistent in its wording.

Mr. Gilles Bisson: I'd like to hear Mr. Hillier.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Again, I think the government is missing the broader, bigger subject matter that needs to be spoken to here.

Why this clause is important is because we see what else is in the bill later on. I'll start my comments by saying, once again, that there are conflicts in mining. There are conflicts in my own riding of Lanark—Frontenac—Lennox and Addington. There are conflicts with First Nations people and mineral exploration companies, with private landowners and exploration companies, with municipalities and private exploration companies. This bill sets out that we're now going to do mining in a manner that's consistent with our Constitution Act—the duty to consult with our First Nations and aboriginal people—in a manner that will minimize and impact the activities of public health and safety.

Again, when you take this in context with what else is in the bill, section 2 excludes municipalities and all others. It excludes them, because they're not included elsewhere in the bill, and they're excluded from this paragraph. It's a significantly important aspect of the purpose. We're spelling out the purpose to, again, clarify and minimize those conflicts.

Here we're essentially saying we're going to abide by the Constitution and we are going to respect treaty rights, and we're going to disregard everybody else: disregard communities, disregard municipalities, disregard private landowners. You're disregarding everybody else.

Laughter.

Mr. Randy Hillier: Again, we can chuckle, we can laugh, we can smirk, we can do whatever, but the fact remains that it was clearly identified through the committee hearings that we cannot treat different communities, different peoples, in different fashions.

The official opposition has other wording on this purpose that is taken in context with the other amendments we've sent in to this committee. I think it's most important that we recognize that this bill has to minimize conflicts if we want to see a growing, prosperous mining industry in this province, and a prosperous, wealthy province.

By this statement—again, with the rest of the exclusions in the bill—we are excluding all those others from the purpose of this bill.

The Chair (Mr. David Orazietti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: I'm just wondering if I can get leg counsel and maybe a lawyer from the ministry to respond. As I read it, the bill as written says, "and to minimize the impact...." The government is proposing to put in "and in a manner that minimizes...." Is that a weakening? That's the question. Maybe I can get someone just to explain it. Could "in a manner" be interpreted by someone in the future to say that you can prescribe what that duty to consult is much, much easier, that it would be less rigid? That's what I'm trying to figure out.

The Chair (Mr. David Orazietti): Thank you, Mr. Bisson. Does anybody from the ministry want to clarify this?

Interjection.

Mr. Gilles Bisson: Yes, that's why I'm asking.

The Chair (Mr. David Orazietti): Please come forward and have a seat. State your name for the purposes of Hansard. If you can provide whatever information you might have with respect to the question.

Ms. Catherine Wyatt: Thank you. My name is Catherine Wyatt. I'm counsel with the Ministry of Northern Development, Mines and Forestry.

As you see, we did change the wording slightly in this section. It now says that it is to encourage prospecting and so on "in a manner consistent with the ... aboriginal and treaty rights" in the Constitution and in a manner that—

Interjection.

Ms. Catherine Wyatt: Sorry. Am I too far away?

The Chair (Mr. David Orazietti): Pull the mic down a little bit.

Ms. Catherine Wyatt: Okay—and in a manner that protects public health, safety and the environment.

I mean, we can't predict what's going to happen in future with interpretation, but it doesn't take away the requirement that the act be "consistent with" or that these activities occur in a manner that is minimizing impacts on public health, safety and the environment.

Mr. Gilles Bisson: Okay, I hear you, but let me—

The Chair (Mr. David Orazietti): Okay, thank you. Mr. Bisson, do you have a follow-up?

Mr. Gilles Bisson: Yes.

The Chair (Mr. David Orazietti): Okay.

Mr. Gilles Bisson: Obviously, if this thing ever ends up in the courts, one of the things they're going to look at is the debate at the Legislature and what we say and do in this committee. I just want to be clear here: The act currently, as written, is pretty clear. It says "including the duty to consult, and to minimize...." There are no ifs, ands or buts.

My question is, by putting in "in a manner that," does that in any way weaken it, in your estimation?

Interjection: It sure does.

Ms. Catherine Wyatt: One could argue that it does, I suppose.

Mr. Gilles Bisson: That's my fear. That's my concern.

Mr. Michael A. Brown: I'd just point out—

The Chair (Mr. David Orazietti): Okay, Mr. Brown, go ahead. Do you want to respond to that?

Mr. Michael A. Brown: I'd just point out to my friend from the third party that it is exactly the same language as refers to the aboriginal treaty. It's exactly the same. If it weakens the environmental protection, it weakens the aboriginal treaty, and I don't think it does either. It just consistently treats both major parts of the purpose clause. So if it weakens one, it weakens the other.

The Chair (Mr. David Orazietti): Okay, Mr. Brown. Mr. Bisson, go ahead.

Mr. Gilles Bisson: And if you can stay there, please.

The question to the parliamentary assistant: Is this type of grammatical change made in other sections of the bill, in your other amendments? Is "in a manner" being used anywhere else?

Mr. Michael A. Brown: I'd have to defer to the counsel.

Mr. Gilles Bisson: I didn't see it. That's why I was asking. I can't remember seeing it.

The Chair (Mr. David Orazietti): Ms. Wyatt, go ahead.

Ms. Catherine Wyatt: I don't think a similar provision appears anywhere else. I mean, the whole purpose thing doesn't repeat itself.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: The government is doing something right here, I think, in this particular section of the bill, and that is something that has been asked for and something I've been calling on for many a year. So I give you credit for actually bringing this forward far more than it has been up to date. My only concern is that by putting in the words "in a manner that," it could end up being litigated later on that you can prescribe what that duty is.

Currently, the way that is written, the purpose clause, it's pretty clear, including the duty to consult. The way it's written now, it says "including the duty to consult, and to minimize" the impact.

I'm just a little bit worried that it's going to weaken this particular section. I would ask the government to

withdraw the words “in a manner,” and I would gladly vote for this section.

The Chair (Mr. David Orazietti): Further debate? Mr. Hillier.

Mr. Randy Hillier: I'll have to agree with the third party here. Reading the original one, that minimizes the impact of activities. Now we have this “and in a manner that minimizes.” Clearly, one is very distinct and defined, and the other one has thrown in a few words that don't clarify things, in my view, at all. When I'm reading that, I could probably transpose words: “that appears to minimize the impact of activities.” With this “in a manner that minimizes,” I think you've added some additional words here that don't serve anybody very well at all. So I would agree with the third party. If you strike that out, we would support it.

1630

The Chair (Mr. David Orazietti): Okay, thank you, Mr. Hillier. Mr. Brown, go ahead.

Mr. Michael A. Brown: What is it exactly that you want to do?

The Chair (Mr. David Orazietti): Mr. Bisson?

Mr. Gilles Bisson: What I'm suggesting is, I'm prepared to support your original language that's in the bill. I think it's actually not bad. In your amendment, you're adding in the words “in a manner.” I'm saying withdraw that and I'll support that section of the bill. I just think it weakens it somewhat. I think it opens it up to litigation. You still get what you want at the end; it just clarifies it.

The Chair (Mr. David Orazietti): Mr. Miller, comment?

Mr. Paul Miller: Yes, just through to the parliamentary assistant: I believe I concur with the other gentlemen that you've added “in a manner that,” and if you get to a point where there's a challenge in the environment or safety and public health, they could argue that they made an attempt, “in a manner,” to do what they were supposed to do: due diligence. But if you remove “in a manner that” and go with the original, it's a lot stronger because they have to comply to the actual wording of the bill. I think it's an error to add that in, and I think you've got co-operation on the bill except for that part, so I would recommend that you withdraw that if possible on that part of this motion.

The Chair (Mr. David Orazietti): Mr. Brown?

Mr. Michael A. Brown: It would be helpful—I'm trying to understand. So you would like “in a manner” taken out of the—

Mr. Paul Miller: Right.

Mr. Michael A. Brown: Let me just read it. “The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources, consistent with the recognition and affirmation of ... aboriginal”—I'll just stop right there. I've taken “in a manner” out in both places.

Mr. Paul Miller: In both places.

Mr. Michael A. Brown: Is that what you want? I'm just trying to understand.

Mr. Paul Miller: There's two places. It's in there twice.

Interjection.

Mr. Paul Miller: That's a good point, yes.

Mr. Michael A. Brown: If it weakens it in one place, it weakens it in the other, and if it strengthens it in one place, it strengthens it in the other.

Mr. Paul Miller: Well, either it's in or out.

Mr. Michael A. Brown: Yes. We're trying to put it in both places. You're trying to put it in one and not the other, or—

Mr. Gilles Bisson: No, I hear you. Let me just go back and take a look at it again. I think that's fine.

Mr. Paul Miller: You don't have a problem.

Mr. Gilles Bisson: I don't think I have a problem, but I just want to read it. “The development of mineral resources”—

Mr. Michael A. Brown: Before I do that, I just want to talk to the lawyers about it for a second.

Mr. Paul Miller: We'd like them both out.

Mr. Gilles Bisson: Yes.

The Chair (Mr. David Orazietti): Do you want five minutes to clarify this?

Mr. Michael A. Brown: Can I just talk to the legal counsel on this so we know?

Mr. Gilles Bisson: Sure, why don't you take five minutes?

The Chair (Mr. David Orazietti): Mr. Bisson, do you want to comment further, then?

The Clerk of the Committee (Mr. Trevor Day): Do you want to move for a five-minute recess?

Mr. Gilles Bisson: I would move for a five-minute recess, Chair.

The Chair (Mr. David Orazietti): All those in favour? Opposed? Okay. Five minutes.

The committee recessed from 1634 to 1636.

The Chair (Mr. David Orazietti): Okay, Mr. Brown, go ahead.

Mr. Michael A. Brown: On further request, the government would just withdraw this amendment.

The Chair (Mr. David Orazietti): Okay. The amendment is withdrawn.

Conservative amendment, motion 4.1. Mr. Hillier.

Mr. Randy Hillier: I move that section 2 of the Mining Act, as set out in section 2 of the bill, be struck out and the following substituted:

“Purpose

“2. The purpose of this act is to encourage prospecting, staking and exploration for the development of mineral resources in a manner that minimizes any adverse impact of these activities on public health, safety and the environment and in a manner that is in keeping with the Constitution Act, 1982.”

The Chair (Mr. David Orazietti): Elaborate; go ahead.

Mr. Randy Hillier: Yes. As I've talked earlier on the previous two amendments, they're on the same clause. As I've said earlier, we don't want to exclude consultation with this bill. We don't want to exclude com-

munities and others. We want to make it inclusive. When you identify certain groups, you're by that very nature excluding those that you don't identify. That's why we've drafted up this amendment, so further on in the bill you'll see the motions where we are proposing amendments to broaden out that consultative approach, that participatory approach, that joint approach between mining and mineral exploration and communities throughout the province, that all communities, whether they're a municipality in southern Ontario, like my own in Frontenac and Lanark or in Attawapiskat or any community in between, be included in that joint participatory arrangement with also the benefits of resource sharing.

It's important for this committee to understand that where conflicts arise so often is—and it's so clear in my community—that the municipality often doesn't receive much benefit from having mining in its community but they have to bear the cost. They have to bear the cost of infrastructure but the province derives all the revenue. So we need to broaden out our scope here. If we really want to see mining reach its potential prosperity in this province, I think we have to be very inclusive and not exclude anybody from this participation. I would ask that you support this motion.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. I saw Mr. Bisson's hand.

Mr. Gilles Bisson: Where's the whole section around "in a manner consistent with the recognition," the duty to consult?

Mr. Randy Hillier: It's already in—

Mr. Gilles Bisson: That's my question. I read this and I've got a further problem with it, but let me deal with the first one. Where is the section in the current purpose clause that deals with—we have in the current section 2 the issue of the duty to consult. I don't see it in your amendment here.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: You don't see it in the amendment. The reason it's not in the amendment is that we've just identified that it's in keeping with the Constitution Act. There's a whole series of legal judgments, decisions and wording in our Constitution. We don't have to identify all the wording if we identify the Constitution. It's been identified that there is a duty to consult; that's been ruled by the Supreme Court of this country. Whether we add it here or not, it is now part of our Constitutional obligations and the Supreme Court has ruled on it, so we didn't—let me put it like this: Our total Constitution Act—it also includes the Charter of Rights and Freedoms. Nobody has proposed that we put in "the Constitution Act and the Charter of Rights and Freedoms." It's known that when we say, "the Constitution Act," it incorporates all those component parts.

The Chair (Mr. David Oraziotti): Thank you. Mr. Bisson?

Mr. Gilles Bisson: I'm just saying I don't want to be unsupportive but I think I'm going to have to be. What we're trying to do in this act—at least what I've been trying to do for some years—is to give not only clarity to

the mining sector, but also to provide First Nations with some ability to have a say about what happens on traditional territories, and if we don't spell that out in the purpose, I think it very much weakens the bill. So I'd have difficulty supporting this.

As far as other individuals' or entities' rights when it comes to how we protect their interests when it comes to social and environmental issues, there are many other bills that deal with that—under the Municipal Act and others—that First Nations don't have access to. That would be my understanding of why we'd put this in the purpose clause.

The Chair (Mr. David Oraziotti): Any further comment or debate? Mr. Brown.

Mr. Michael A. Brown: I'm interested in Mr. Hillier's response to Mr. Bisson.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: To minimize any adverse impact of these activities on public health, safety and environment, we're not saying only for some areas or some groups but for everyone to minimize negative impacts, without exclusion, that everyone—and in a manner that's keeping with the Constitution. I think that the brevity of it is the clarity. Anybody reading that in the future would know that it means completely the same throughout this province everywhere, that everybody would be accorded—none of their rights would be diminished or privileges extended. It would be incorporated for everyone. Duty to consult is included in our constitutional obligations, as our Charter of Rights and Freedoms, as our provincial jurisdictions. I think it adds confusion when you start prioritizing some components of the Constitution over other components.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. Mr. Bisson, did you want to respond?

Mr. Gilles Bisson: I again would say—let's say I accept your argument, which I don't. You're excluding from that the section that deals with aboriginal and treaty rights. Ontario has signed on to Treaty 9, and under that treaty we have said we will go in and share the land and we will develop the land in co-operation with First Nations and give them some benefit out of it. Why are we excluding that? It seems to me that would very much weaken the purpose of the bill.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. Mr. Hillier, do you want to respond?

Mr. Randy Hillier: Those treaties are part of our Constitution now. The treaties are part of our Constitution, and that's just a fact of life. The treaties, they survive. They are the crown's obligation that survives to this day. They're part of our Constitution.

In reading through those treaties, we can see that clearly those obligations were set forth; many obligations are set forth within those treaties already. That's why the Supreme Court has indeed ruled on things like the duty to consult and accommodate.

The Chair (Mr. David Oraziotti): Okay, thank you, Mr. Hillier. Mr. Bisson, further comment?

Mr. Gilles Bisson: The problem is that "duty to consult" doesn't exist within the Constitution. It is a decision

of the Supreme Court of Canada, which has interpreted the rights of individuals under the Constitution and has said that although this Constitution does not specifically say what it is that you're saying, we're going to clarify it by court ruling. So if you don't put it in there, it could be read that you don't have a duty to consult; the crown doesn't have it. That's the way I would see it.

First of all, "duty to consult" is not in the Constitution, and treaty rights themselves are not in the Constitution, as I understand it. Am I wrong?

Ms. Catherine Wyatt: Treaty rights are in the Constitution.

Mr. Gilles Bisson: Not in section 35, though. Is it section 35? All right, I stand corrected.

The Chair (Mr. David Oraziotti): Okay. Mr. Bisson, finished?

Mr. Gilles Bisson: Yes, I was done.

The Chair (Mr. David Oraziotti): Mr. Brown, comment?

Mr. Michael A. Brown: As all members of the committee would know, all laws in Canada and all actions of governments in Canada are subject to the Constitution of Canada, 1982. So it is the same for everyone. What is happening here in the government's purpose clause is that we specifically recognize section 35 of the Constitution and the rights that emanate from that—you're right—for a specific situation. But everyone else has the same rights. I don't see any conflict. All the government is doing is recognizing a fact of Canadian jurisprudence.

The Chair (Mr. David Oraziotti): Okay, thank you. Any further debate on the Conservative motion?

Mr. Randy Hillier: I'll just comment: You're adding in a separate component. As I mentioned earlier, and as you agreed, all jurisdictions have to abide by the Constitution. If we pass legislation that does not, then it's subject to Supreme Court rulings or challenges, and if it is indeed not constitutional, it'll probably be struck down. I would say it will be struck down if it's not constitutional.

You're identifying one component. You're giving dominance, or I guess pre-eminence is a better word, to identifying one component. The BNA Act of 1867 is part of our Constitution; we're not identifying it in here. Our Charter of Rights and Freedoms is part of our Constitution; we're not identifying it in here. However, we're identifying everything when we just say, "Constitution Act, 1982." We're not giving pre-eminence to any component part of the Constitution.

The Chair (Mr. David Oraziotti): Mr. Bisson.

Mr. Gilles Bisson: I'm just going to make the point one last time that I hear what you're saying, and I partially agree, and I think the parliamentary assistant partially agrees that, yes, in fact, the Constitution applies to all our laws. Nobody argues that.

The issue is that the duty to consult and accommodate was a decision of the Supreme Court. What I see the government trying to do in part is to encompass the duty to consult in the legislation and to clarify that, in fact, the government of Ontario has heard and has accepted the

decision of the Supreme Court, and it will be the law of the land.

Unfortunately, you don't go to the other part, which is the duty to accommodate. It's a bit of a half victory for me, but that's who I am.

I won't be able to support this because I really believe that you have to have in the purpose clause something that clearly states that the crown recognizes that it has the duty to consult and, I would argue, accommodate.

The Chair (Mr. David Oraziotti): Okay. Any further comments? Conservative motion 4.1: All those in favour?

Mr. Randy Hillier: I'll ask for a recess, please.

The Chair (Mr. David Oraziotti): How long?

Mr. Randy Hillier: Twenty minutes.

The Chair (Mr. David Oraziotti): Okay, 20 minutes. *Interjection.*

The Chair (Mr. David Oraziotti): A recorded vote, Mr. Hillier, when we come back, or not?

Mr. Randy Hillier: Sure.

The Chair (Mr. David Oraziotti): Okay. For 20 minutes, the committee is in recess.

The committee recessed from 1650 to 1710.

The Chair (Mr. David Oraziotti): Okay. Conservative motion 4.1: Debate is concluded. There has been a recorded vote called for.

Ayes

Hillier.

Nays

Bisson, Brown, Brownell, Kular, Mauro, Mitchell.

The Chair (Mr. David Oraziotti): The motion is lost. Section 2—we're going to vote on section 2. Any debate on section 2?

Mr. Randy Hillier: There's still one more motion for section 2.

The Chair (Mr. David Oraziotti): All those in favour of section 2?

Mr. Gilles Bisson: I thought there was another section.

The Clerk of the Committee (Mr. Trevor Day): Section 2.1 comes after section 2.

Mr. Gilles Bisson: Oh, I'm sorry. I wasn't following.

The Chair (Mr. David Oraziotti): All those in favour of section 2? Opposed? Section 2 is carried.

NDP motion number 5, Mr. Bisson.

Mr. Gilles Bisson: I move that the bill be amended by adding the following section:

"2.1 The act is amended by adding the following section:

"Revenue sharing

"3.1 Fifty per cent of the royalty or tax paid by any mine in Ontario shall be shared with the aboriginal communities that have an interest in the affected area."

I'd like to speak to that, please.

The Chair (Mr. David Oraziotti): Mr. Bisson, you know that you can't speak to it because it involves imposing a tax and specific allocation of funding, according to standing order 57, so the motion is out of order.

Mr. Gilles Bisson: Darn.

Mr. Randy Hillier: Good motion, though.

Mr. Gilles Bisson: I thought it was very good.

The Chair (Mr. David Oraziotti): NDP motion number 6, Mr. Bisson.

Mr. Gilles Bisson: I move that the following section be added after section 7 of the Mining Act, as set out in section 3 of the bill:

"Record of mining rights

"8. The Provincial Recording Office shall ensure that every purchaser of land is informed if mining rights were once attached to the land but no longer are so attached."

I will be the first to admit that the language on this is a little bit loose. If anybody wants to give a way of clearing it up, that would be great.

What this speaks to is, a few of the presentations we had spoke to the issue that it would be helpful to know if the mining rights were originally attached with the property when it was being sold, and to clarify for new, subsequent owners if the mining rights were withdrawn.

The Chair (Mr. David Oraziotti): Thank you, Mr. Bisson. Further comment? Mr. Brown.

Mr. Michael A. Brown: The proposed amendment involves private property rights and is beyond the scope of this bill. It is a "buyer beware" concept, requiring due diligence of the purchaser, through systems beyond those which are maintained by the Provincial Recording Office. So it's beyond the scope of the bill, and the ministry wouldn't have the ability to do what's being asked here.

The Chair (Mr. David Oraziotti): Mr. Hillier?

Mr. Randy Hillier: I'll have to speak to that. That is such an excuse, and such an unreasonable excuse as well.

Listen, we've seen—and have the evidence first-hand—people who have purchased properties, and they search the title for their properties. Nowhere, when searching title, does it appear if the mining rights have been alienated or not, right? That's what this amendment is proposing to do: to have it clearly identified for the purchaser, when they search title, if there is anything unusual or any aberrations from what is normally expected.

This is where most of the problems, or a significant number of problems, and conflicts have arisen, when an individual purchases their property, does their title search, and then finds somebody staking their land years later, with complete unawareness that they don't own underneath their ground.

So I think it's incumbent on the government to not only consider this—this is a way to alleviate problems. That's what it is. If there is an easement on somebody's property, it has to be registered on title. That's what we're saying here. If mining rights have been alienated, it has to be registered on title. This is not a case of private property rights, this is a case of common sense and proper notification. When those mining rights have

reverted to the crown, whether it's through the mining taxes or whatever—however they've been removed from the surface rights owner—the crown has a duty and an obligation to ensure that that information appears on title.

I would agree with the member from the third party that maybe the wording is a little bit loose, but clearly the intention is proper and I think we ought to be looking at, if necessary, revising the wording a little bit. But we can't cop out and say that this is beyond the scope of this bill. One of the reasons we're doing this bill is because of all the controversy that has arisen when people have had their lands staked without knowing that they've lost their mining rights or their mineral rights. So I'm fully supportive of this amendment. I think we would do a terrible injustice to everybody if the government says, "It's not our business, it's not our department. It's outside the scope of this bill." It would not be fair to the people of this province.

The Chair (Mr. David Oraziotti): Further debate or comment?

Mr. Michael A. Brown: It is outside the scope of this bill and the member now has a great opportunity to bring forward a very imaginative private member's bill to do it. It is not possible—and that's what we're saying—for us to do what the member wants done in every situation. And I would suggest to the member that, seeing as the government is withdrawing all staking rights in southern Ontario, it is probably something totally unnecessary.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Randy Hillier: I would say that it would be unnecessary if you reunified mineral and surface rights, but you've come up with a policy of withdrawal of exploration which can be overturned by the minister—there are exceptions allowed for the minister. That withdrawal has no meat, no substance. If the government was really honest in its intent to combine those properties, they would reunify mineral and surface rights.

Listen, it's not beyond the scope for one simple reason: This is an amendment to the Mining Act. If we can incorporate it in the Mining Act that the crown ownership of mineral rights will be identified in the land registry office, that is not beyond the scope. That is pretty simple, pretty easy and sensible. It's a record of mining rights that they now show up on title. That's all that this amendment is looking to do. If the crown owns the mineral rights, say so, identify it, document it.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Bisson.

Mr. Gilles Bisson: Just to the point of the parliamentary assistant, he's saying that it's not necessary because of the move on the part of the government to deal with mining rights in southern Ontario, but it's not the case in northern Ontario. That's what that was all about and I think Mr. Hillier has made the point.

The Chair (Mr. David Oraziotti): Any further debate? Comment? Okay. Seeing none, all those in favour of NDP motion number 6?

Mr. Randy Hillier: I'll call for a 20-minute recess.

The Chair (Mr. David Orazietti): Okay.

Mr. Gilles Bisson: Can I have a recorded vote when we get back?

The Chair (Mr. David Orazietti): Okay. A recorded vote and a 20-minute recess. The committee's in recess.

The committee recessed from 1719 to 1739.

The Chair (Mr. David Orazietti): Okay, we'll resume, and we are at NDP motion number 6. A recorded vote has been called for.

Ayes

Bisson, Hillier.

Nays

Brown, Brownell, Kular, Mitchell.

The Chair (Mr. David Orazietti): The motion is lost. Any debate on section 3? Mr. Bisson, go ahead.

Mr. Gilles Bisson: Let me double-check to make sure I am correct. Never mind, it was in another section. Sorry.

The Chair (Mr. David Orazietti): Shall section 3 carry? Okay, it's carried.

Sections 4, 5 and 6: There are no amendments. Shall they carry? Carried.

Government amendment number 7. Mr. Brown, go ahead.

Mr. Michael A. Brown: I move that subsection 19(1) of the Mining Act, as set out in subsection 7(1) of the bill, be amended by adding "for the licence" at the end.

This is a very simple clarification. The amendment simply clarifies that the application referred to in the subsection is the application for a prospector's licence.

The Chair (Mr. David Orazietti): Any further comment on motion 7?

Mr. Gilles Bisson: What page of the bill is that?

Mr. Michael A. Brown: That's a good question

Mr. Gilles Bisson: I was looking at another section. If somebody could just—

Mr. Michael A. Brown: It's subsection 7(1).

Mr. Gilles Bisson: And that's on page 4?

Mr. Michael A. Brown: It's on page 3 of the bill.

Mr. Gilles Bisson: Sorry, I was on the wrong side. So you want to add it at the end of "date of the application"? Am I understanding that right? Is that where you're inserting this?

Mrs. Carol Mitchell: "For the licence."

Mr. Gilles Bisson: Is "for the licence" inserted after the words "date of the application"?

Mr. Michael A. Brown: That's right.

Mr. Gilles Bisson: So it's, "Any person who is 18 years or older is entitled to obtain a prospector's licence upon providing evidence that he or she successfully completed the prescribed prospector's awareness program within 60 days before the date of the application for the licence."

Mr. Michael A. Brown: Right.

Mr. Gilles Bisson: So you're just clarifying

Mr. Michael A. Brown: We're just clarifying.

Mr. Gilles Bisson: Oh, man, I'm a pushover. Oh man, okay.

The Chair (Mr. David Orazietti): All right. Any further comment on 7? All those in favour of amendment 7? Opposed? Carried.

Shall section 7, as amended, carry? All those in favour? Opposed? Carried.

Amendment 8, an NDP motion. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I move that subsection 21(1) of the Mining Act, as set out in subsection 8(1) of the bill, be struck out and the following substituted:

"Renewal of licence

"(1) A licensee is entitled to a renewal of his or her licence if, within 60 days before the expiry of the licence, the licensee applies for the renewal."

It's fairly clear. I just want to see what my friend the parliamentary assistant has to say to this.

The Chair (Mr. David Orazietti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I'm interested in hearing the reason it's being proposed.

Mr. Gilles Bisson: Well, the existing licensee doesn't require any awareness training, right?

Mr. Michael A. Brown: We were afraid of that.

Mr. Gilles Bisson: Okay.

The Chair (Mr. David Orazietti): Mr. Brown, are you going to comment?

Mr. Michael A. Brown: Yes, we can't support it. The effect of the proposed amendment is to delete the requirement to take the prospector awareness program. This program is a cornerstone of the modernized mining regime in Ontario to ensure that prospectors are aware of their obligations in prospecting and consulting with aboriginal communities.

Mr. Gilles Bisson: So I can't slide this one by you, then?

Mr. Michael A. Brown: I thought you—no.

Mr. Gilles Bisson: To the point, this and a few other things later are going to deal with that. First of all, I think that nobody disagrees with the idea that people need to be aware of what their responsibilities are under this act once it becomes proclaimed so that clearly people do what they're supposed to do.

The issue is that there are a lot of people who have been in the business for many, many years who are going to have to undergo training for issues they're already dealing with, and a lot of people are finding that somewhat offensive. You would've heard that from various prospectors who presented to our committee across northern Ontario. They've been at this business for a long time and understand well what their responsibility is.

What they've asked, and the reason I brought the amendment forward, is that anybody new entering the field would obviously have to go through this particular program, but if somebody has been in the business for a prescribed period of time, they would not have to go through this particular training.

Mr. Michael A. Brown: In other words, it's grandfathering.

Mr. Gilles Bisson: Yes, it's a grandfathering clause.

Mr. Michael A. Brown: I would just suggest to the member that mining and prospecting in the 21st century have changed. I know a great number of prospectors, and they're all very competent and good at what they do, but it does not hurt anyone to have a refresher course and to understand the new obligations that may be placed on them under the new regime. I think it would be helpful to all prospectors to take this course, and if it were not necessarily helpful to all prospectors, it would be helpful to most. This is not an onerous course. This is just to bring people up to speed on what the changes are in the climate we are operating in, in Ontario today, and how they may best be able to perform their job.

The Chair (Mr. David Oraziotti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: Very quickly, I point out that Mr. Hillier and I are both licensed electricians. The code book, as I understand it, when I wrote my trade exam, which is the better part of 25 or 30 years ago, was much different. I'm not required to go out and write another test or to re-qualify. It is incumbent upon me, as a qualified electrician, to maintain an understanding of the Canadian Electrical Code. I just use that as an example.

There are people who are now within the profession of prospecting who take a lot of pride in the work they do. What they say to me, and you've probably heard the same thing, is, "Why are you telling me to go back and do this? I'm doing it already." So they're saying, "Grandfather those who have been in it for a particular period of time. Make sure that new prospectors coming into the business clearly understand what their responsibilities are under the act, and deal with the bad apples."

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Well, I will add to those comments. Listen, we don't know what this test for this licence will be. That's all left in regulations after. None of us here in this committee will have any input to what is required for a licence. That's a given, okay?

But I want to share with you a little story that may illustrate the dangers.

Mr. Bas Balkissoon: TSSA.

Mr. Randy Hillier: No, it's not the TSSA, because there are so many different examples. We understand intent and all that goody-goody stuff; everybody wants to be well-intended.

I had two gentlemen come into my office this year. Both were sheet metal workers. One had been in the trade for 25 years and another had been in the trade for 30 years. They worked for a contractor in his shop, putting together ductwork. They now have to have a licence. It came in a couple of years ago that they have to have a licence, even for putting in tin. Well, they couldn't pass.

I want to put this in context. I don't know if many people remember, but there was a time when we had a two-year technical program in school for those people

who were not academically inclined; we encouraged them to get into trades. These people did get into trades and were very successful at it—very good, competent tin men. They're now both unemployed. Both their families are facing huge financial difficulties because this government has said, "You must now get a licence." They couldn't pass the mathematical part of that licence.

I'm sharing that story with you because it broke my heart to see these two people who no longer could be employed in the industry they've been employed in for such a long period of time. It destroyed their ability to earn a living. We didn't know, when they passed that legislation, that those sheet metal people were going to be affected so negatively.

We don't know what this licence is going to look like. We don't know what is going to be involved. And until we do know what's going to be involved, there's no way we can take the position that we may take away somebody's livelihood because they're not very good at math and there's some math questions on it, or whatever it could be. We never thought those two tin men were going to be out of work because of government legislation, but they are.

So I agree with the third party here that people who are now prospecting must be protected from unseen consequences of this legislation. We cannot pass legislation that has regulations that are unknown and that can be harmful and detrimental to the people in this province. I'm fully supportive of this amendment.

1750

The Chair (Mr. David Oraziotti): Further comment? Mr. Bisson.

Mr. Gilles Bisson: TSSA: I raised that as an issue with—what do they call themselves again?

Mr. Randy Hillier: The Technical Standards—

Mr. Gilles Bisson: The technical service authority, anyway. The legislation was brought into this House, was accepted and passed by the House to give the TSSA the responsibility for much of the licensing to trades and others. What has happened is, they have now gone out on their own, because of the powers this Legislature gave them, with the ability to regulate trades in a way—and you just raised the one issue, in regard to the sheet metal people. I've had the same thing with qualified contractors in the electrical business who have been in the business for 20 or 25 years. I'm sure they came knocking at all of your doors about four or five years ago when the regulations were changed around a master electrician's ticket, in order to be able to do contracting. Many of the people who were in the trade were people who went into the trade at a time when the mathematical requirements were not as high and now, 20, 25 or 30 years after they've been successful in the business, are having to go back and rewrite and are having one heck of a time.

What I'm trying to do in this bill is to prevent that type of situation from happening again. You've got people who have been in the trade for many, many years. I think of people like Don McKinnon. Do you want to be the one to go to Don McKinnon and say, "Don, you're going to

have to take sensitivity training in order to be able to learn how to prospect in the province of Ontario”?

I think we should show respect to some of the people who have been around for a while. These are people who have been at it for many years, who have been quite successful. Mr. McKinnon, everybody would know, was the discoverer of not only the Hemlo gold mine, but a whole bunch of others. To force people like that into a position of having to redo training in order to qualify themselves as prospectors, I think, would be a bit of an affront, and that's why I'm asking that we have some way of being able to grandfather.

If you don't accept my proposal as far as grandfathering, is there some middle ground that we can come to?

The Chair (Mr. David Orazietti): Mr. Brown?

Mr. Michael A. Brown: I think the government contemplates developing the regulations surrounding this—and most of this bill will be implemented through regulation—by advice we get from the minister's advisory group. In that group—I won't read the list off right now, but almost half of it is prospecting organizations that will be able to provide advice on what the course should have, what exactly the requirements are. My view is that they need to be sensitive to the industry and to the industry standards that are present there today. So I think there can be some assurance that the course will fit the situation.

The Chair (Mr. David Orazietti): Mr. Bisson and then Mr. Hillier.

Mr. Gilles Bisson: Are you saying, then, that they will have to take the course no matter what, in the end? Once the minister's advisory group goes out and fleshes out what the training is going to be all about and what it is that people need to do to qualify, do you contemplate—and this is my question—that there will be a grandfathering provision within the regulation?

Mr. Michael A. Brown: I am not in a position to speculate on that.

Mr. Gilles Bisson: Mr. Hillier wanted to add something.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Again, we craft up all these processes that allow us to make decisions without really making decisions, like making decisions about licensing without knowing what the licence is about, and we default back to “Well, we'll have some industry people there to tell us how to do it properly.”

I can tell you, we had industry people at TSSA for sheet metal. We had industry people for the masters electrician's licence. Those industry people have one failing when it comes to committee-type work: They believe that people are going to act with discretion, common sense and good judgment. Legislation doesn't allow people to do that; regulations don't allow discretion, common sense and good judgment. Regulations lay down the law.

I think everybody here has an obligation to understand those consequences, and everybody here, on both sides of this committee, recognizes the dangers. We've seen the evidence so many times. Do what's right. Make sure that the people who are prospecting now will not be harmed by this legislation. Put the clause in place that protects existing prospectors' livelihood and opportunities to go out and find wealth for this province.

It's not enough just to say, “Others will take care of it.” We have an obligation to make sure that we don't allow individuals to be harmed by the legislation that is passed in this House.

The Chair (Mr. David Orazietti): Mr. Bisson.

Mr. Gilles Bisson: I again go back to the parliamentary assistant. I accept and recognize that the government wants to do something to ensure that people entering into the business of prospecting or exploration clearly understand what is required of them when it comes to accessing lands and how they're to deal with the various legislation they come in contact with, including the duty to consult that the crown has and to accommodate.

I'm just looking for some way to have some flexibility, when the regulations are drawn, in the legislation, or somehow we can get to that, that would allow us to grandfather people who have been in for a certain period of time. What you could end up with quite easily is somebody who is an existing prospector who just says, “By principle, I'm not going to do it.” They'll be in a position of not having a prospector's licence, and I think we don't win when that happens. Like I say, I haven't talked to Mr. McKinnon, but I'm sure he would be one of the people who would fall into that category and would be fairly incensed by this and say, “The heck with it; I'm not going to do it.” Ontario is not well served by losing people like that in the industry.

So I would ask the government—and I'm going to ask for a bit of a recess here at the end of the day—to go away and come back with something that would get us to where I'm trying to get. I accept what you're trying to do. New people going into the business clearly need to understand what their responsibilities are, but we've got to be able to figure out some way to grandfather those people who have been in the industry for a while so that they're not feeling, “Jeez, everything I've been working for all these years doesn't mean anything.”

With that, I would ask that we have a 15-minute recess.

The Chair (Mr. David Orazietti): Is there any further debate?

Mr. Michael A. Brown: I was just going to point out to the member that we're going to take advice from the Northwestern Ontario Prospectors Association, the Sudbury Prospectors and Developers Association, the Sault and District Prospectors Association, the Ontario Prospectors Association, the Boreal Prospectors Association, the Southern Ontario Prospectors Association, the Porcupine Prospectors and Developers Association and the PDAC.

I can't imagine that the advice we'll get from these folks will be not helpful to all prospectors. I'm perfectly content to allow this to happen with regulations because the people who really know what these folks need to do—I would suggest that some of these folks, maybe not all, but some of the prospectors who are out there today would be well served by an update on what the requirements of the new Mining Act are. That is the major thrust of this licensing regime.

The Chair (Mr. David Oraziotti): Okay, thank you. Mr. Bisson, you have about 30 seconds.

Mr. Gilles Bisson: Again, is the parliamentary assistant telling us that there is going to be a provision for

grandfathering in the regulation? That's what you seem to be telling me now.

Mr. Michael A. Brown: I'm not telling you that, no. I'm telling you that we will be listening to these advisers to the minister on what should happen with regard to the prospectors' course.

The Chair (Mr. David Oraziotti): Okay. It is now 6 of the clock. The committee is going to be adjourned until Wednesday in room 228. There will be a translation booth set up in room 228. Committee is adjourned.

The committee adjourned at 1800.

CONTENTS

Monday 14 September 2009

Mining Amendment Act, 2009, Bill 173, <i>Mr. Gravelle</i> / Loi de 2009 modifiant la Loi sur les mines, projet de loi 173, <i>M. Gravelle</i>.....	G-1011
--	--------

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Orazietti (Sault Ste. Marie L)

Vice-Chair / Vice-Président

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mr. Robert Bailey (Sarnia–Lambton PC)

Mr. Jim Brownell (Stormont–Dundas–South Glengarry L)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mrs. Carol Mitchell (Huron–Bruce L)

Mr. David Orazietti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Also taking part / Autres participants et participantes

Mr. Paul Miller (Hamilton East–Stoney Creek / Hamilton-Est–Stoney Creek ND)

Ms. Catherine Wyatt, legal counsel, Ministry of Northern Development, Mines and Forestry

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

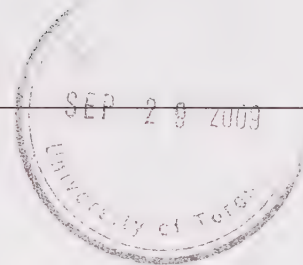
Ms. Catherine Oh, legislative counsel



G-38

G-38

ISSN 1180-5218



Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 16 September 2009

Journal des débats (Hansard)

Mercredi 16 septembre 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant
la Loi sur les mines

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.



LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 16 September 2009

Mercredi 16 septembre 2009

The committee met at 1603 in room 228.

ELECTION OF VICE-CHAIR

The Chair (Mr. David Oraziotti): Good afternoon, everyone. Welcome back to the Standing Committee on General Government consideration of Bill 173, an Act to amend the Mining Act.

We have a couple of items that we need to take care of: first of all, the election of a Vice-Chair. Mrs. Mitchell, could you speak to that?

Mrs. Carol Mitchell: Yes, I would be very pleased to move that Helena Jaczek's name go forward. She doesn't have the opportunity to be here right now, but I have spoken to her and she's quite interested in becoming the Vice-Chair, if supported by the committee.

The Chair (Mr. David Oraziotti): Any other nominations? Okay, we'll accept her name in absentia. All in favour? Carried.

SUBCOMMITTEE MEMBERSHIP

The Chair (Mr. David Oraziotti): The next item is the makeup of the subcommittee. Mr. Mauro.

Mr. Bill Mauro: I move that Ms. Broten replace Mrs. Mitchell as the government member of the subcommittee on committee business.

The Chair (Mr. David Oraziotti): Any debate? All in favour? Carried.

COMMITTEE BUSINESS

The Chair (Mr. David Oraziotti): The last item: According to the subcommittee report with respect to the time allotted for clause-by-clause of this bill, we would wrap up today at 6 o'clock. If that doesn't happen, we need committee discussion to perhaps move forward, giving more time for this bill, or move to Bill 191, which is what the original subcommittee report says. The original subcommittee report indicates that the time would end today, and then next week we would move to Bill 191. We may or may not need to have that discussion later on, but I just put that on the table for everyone's consideration today.

Thank you. I think those are all the items.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Oraziotti): We can continue with NDP motion number 8, which was on the floor. However—

Mr. Randy Hillier: Our NDP member is not here.

The Chair (Mr. David Oraziotti): I don't see Mr. Bisson here.

Mr. Randy Hillier: I guess I would like to speak to it.

The Chair (Mr. David Oraziotti): Would you like to speak to it?

Mr. Randy Hillier: Sure.

The Chair (Mr. David Oraziotti): Okay.

Mr. Randy Hillier: We did speak to this at length on Monday. Of course, the discussion centred around the grandfathering of existing licence holders. I'm just wondering if the government had time to contemplate and reflect on that grandfathering clause that we discussed on Monday.

Mr. Gilles Bisson: Thank you for asking that question. That's exactly what I wanted to know.

Juste au cas qu'ils n'avaient pas compris l'anglais, je vais parler en français, parce que nos amis sont ici aujourd'hui.

Comme on l'avait mentionné l'autre jour, il y a beaucoup de monde qui, depuis des années, font leur vie dans ce domaine comme prospecteurs. J'imagine avoir le bon mot, oui? Je pense que demander à ce monde-là d'aller se requalifier et d'avoir une licence de requalification est un peu difficile. Donc, on va vous demander, êtes-vous capables de regarder la possibilité de faire un amendement à l'acte qui donnerait la chance à ce monde-là d'être acceptés comme prospecteurs sans falloir aller à travers le programme et seulement l'appliquer pour les nouveaux?

Interjection.

Mr. Gilles Bisson: You could listen to the interpreter. Then you'd know what I was saying.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: We've given the amendment careful consideration over these last two days, and we're ready to vote.

Mr. Gilles Bisson: Then if you're ready to vote, I take it what you're saying is that, no, in fact you're not prepared to do grandfathering. Am I correct in my understanding?

Mr. Michael A. Brown: Yes.

Mr. Gilles Bisson: Well—

The Chair (Mr. David Orazietti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: Yes, I know. But when he says "yes," I thought that I had to put my hand back up. Okay. I'm just having fun with you, Chair.

Listen, I don't want to get in a two-hour debate this afternoon over grandfathering. You can well appreciate that there are many people who have been making their living at the profession of prospecting. They know what they're doing. They've found mines; they've done the stuff that needs to be done; they're responsible operators. I think of people like Dave Meunier and Don McKinnon and a whole bunch of others, people who have been at this for a long time. And I don't think our request to grandfather them, so that they don't have to go through this, is an onerous one.

The government will still get, at the end of the day, what it wants, which is probably not a bad idea: training, in order to provide new prospects with the information they have to have as far as what is required of them when it comes to the job that they're going to be doing when it comes to prospecting, so they clearly understand their role—not so much their role, but their responsibility vis-à-vis the law. I support that; I don't have a program with the concept.

My only point is that if somebody has been making their living at this for 10, 20, 30 years, it's a bit hard to say, "You're going to have to go back out and re-qualify." Number one, people will see that as a bit of an affront. They will say, "Do you mean to say that I don't know what I'm doing and I haven't known what I was doing for 20 years?" And number two, the answer from the government, or the ministry, would be, "Oh, no, we know you know what you're doing, but we want to make sure that you're up to speed with what it is that you have to do when it comes to the requirements of the act." Well, they do this on a daily basis, so it's really an affront.

I would urge the government to reconsider and support some sort of a grandfathering amendment, and we'd be prepared to work with you towards that end.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: I really can't understand why there is such obstinacy on the government side about reasonable and sensible propositions and suggestions here. We're not asking for something that is totally radical or totally unknown in this land. These are things that are sensible, reasonable and that are applied whenever new legislation comes forth that affects previous conditions and opportunities of employment.

1610

This unwillingness on the government side to entertain any thoughts or suggestions other than what their own

amendments are, I find it strictly an atrocious type of response. The purpose of this committee is indeed to look at every clause and every amendment to those clauses that we've heard people come to committees and talk about. We do have an obligation to those people, who travelled many hours and days and at great expense to come to this committee throughout the province and express their concerns. They have an expectation that there was some value in that travel, some value in the taking up of their time. For the government just to turn a blind eye and a deaf ear to all those people, that is not what people are expecting of their elected representatives.

This is a reasonable request—grandfathering existing prospecting licences. What more can be said?

The Chair (Mr. David Orazietti): Mr. Brown, go ahead.

Mr. Michael A. Brown: Let me be clear: This program is a cornerstone of a modernized mining regime in Ontario to ensure that prospectors are aware of their obligations, in prospecting, in consulting with aboriginal communities. The proposed prospector's awareness program is an educational tool only. It is not a training program or a certification requirement for a prospector's licence. The intent of the program is to make licence holders aware of the new provisions of the act, such as aboriginal engagement, exploration planning and permitting activities on crown and private land. It is not—I repeat—it is not intended to test a prospector on how to stake a mining claim.

The ministry will work with stakeholders to ensure that there will be appropriate accommodations in place for anyone who needs to take the awareness program to obtain a prospector's licence.

The Chair (Mr. David Orazietti): Mr. Bisson, do you have further comment?

Mr. Gilles Bisson: We'll have a chance to talk about this a little bit more in the next amendment, as you're well aware. Just for the record, the parliamentary assistant is saying that this will not be a requirement to the licence, but it's clear in the way this act is written in section 8 that you can't get a licence unless you complete the prospector's awareness program. Therefore, it has to be a requirement to the licence.

My argument is simply this: I support wholeheartedly the approach of the government to create a process by which people who go into the prospecting field understand what their obligations are. I think that's a good idea and I think it's long overdue. I agree that's a good step towards a modernization of the act. I don't have an argument with you. All I'm saying is that we need to find some way to grandfather in those people who have been in.

We've done that for electricians when we did electrical certification, years ago. It was a time when people were able to work in many trades—electrical, sheet metal, welding and others—where licences were not required, and apprenticeships didn't have to be served. When an apprenticeship program was created back in the

1960s or the 1970s, I worked with guys who were grandfathered in the trade. The people who were journeymen to me when I was apprenticing as a young apprentice in the 1970s were people who had been in the trade in the 1950s and 1960s who had never gone to school but had learnt the job as a result of working in the electrical field for a number of years. They were quite knowledgeable. I never ran across any of these fellows that I worked with who were grandfathered who were not qualified to hold that licence.

The government of the day decided—I think rightfully so—that you had to have a mechanism to recognize the contribution and the experience gained by workers prior to the certification being needed. So we grandfathered.

We've done that in almost every case where we've gone and recognized a new trade or added a requirement when it comes to what is required of people as far as their responsibilities for work. It's not earth-shattering for us to ask for grandfathering; we've done it. You've been here longer than I have. I've only been here since 1990. You were here, what, in 1985 I guess, when you first came, Mr. Brown?

Mr. Michael A. Brown: In 1987.

Mr. Gilles Bisson: In 1987. So you came during the accord. You've seen these examples as well, where we've grandfathered people in various trades.

I support what the government is trying to do. I want to vote in favour of the prospectors' awareness program, but I find myself in the difficulty of having to vote against because we're saying we're not going to grandfather those people who have found the gold mines and diamond mines and nickel mines that have been producing in this province for years. I think that's a bit preposterous, so I ask you again—we'll get a chance to vote on this. We'll see if you change your mind—I doubt it—and if not, we'll be into the next amendment.

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Well, I think it's just hypocrisy here that the government is looking—

Mr. Michael A. Brown: Careful.

Mr. Randy Hillier: Well, no. Listen, it's a contradiction that the government is looking for latitude with putting in place all the requirements by regulation and then not providing any latitude whatsoever in accommodating those people who make their living doing this.

It is called a licence, and a licence, by definition, permits you to do what otherwise is illegal or not allowed to be done. That's what a licence is. If it was just an awareness program, that's all it would be: people taking an awareness program. You're calling for a licence, with the awareness program as part of that licensing. We don't know what else is going to be in there, and neither do you, I am sure.

Let's give some latitude so that there can be proper discretion and reasonableness applied, and have a grandfather clause for those people who are presently involved in exploration. It's such a simple, sensible request. I

cannot believe that the government is opposed to such a reasonable request.

The Chair (Mr. David Oraziotti): Any further comment on the motion? Seeing none, all those in favour?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): Recorded vote. Okay.

Mr. Randy Hillier: Recorded vote and a 20-minute recess, please.

The Chair (Mr. David Oraziotti): Okay, a 20-minute recess.

The committee recessed from 1617 to 1637.

The Chair (Mr. David Oraziotti): We'll call the committee to order. We have a request for a recorded vote. NDP motion number 8.

Ayes

Bisson, Hillier.

Nays

Brown, Kular, Mangat, Mitchell.

The Chair (Mr. David Oraziotti): The motion is lost. NDP motion number 9. Mr. Bisson.

Mr. Gilles Bisson: I move that subsections 21(6) and (7) of the Mining Act, as set out in subsection 8(2) of the bill, be struck out and the following substituted:

"Lifetime renewal by minister

"(6) The minister shall renew without fee the licence of a person who has held a licence for 10 years, and the licence shall remain in good standing during the lifetime of the licensee."

This is in keeping with the amendment we had prior to this. The government is continuing—I believe this is a practice that existed in the old act, that the minister could renew, if I remember correctly. I'm just looking for some clarification from the parliamentary assistant. Under the current act, the minister had this particular authority already. Am I correct? That's what I thought. And the 25 years—to the parliamentary assistant—was also in the current act, right?

Mr. Michael A. Brown: Twenty-five.

Mr. Gilles Bisson: Yes; I just want to remember. There are two parts of this amendment that I was trying to get at. One was that the requirement be moved from 25 to 10 years, and the reason for that is fairly apparent. There is no need to get into a big debate about that. It just seemed a more reasonable way to do it, but also, it was in keeping with trying to have some provision for grandfathering. And again, just having a chat with Mr. Hillier—both of us served electrical apprenticeships and became qualified electricians. We were just having a bit of fun talking about the fact that we went to the same college together, but that's a whole other story. The point is that we have gone through this process of grandfathering and a whole bunch of other experiences in the profession and trades across Ontario, and all I'm trying to

get out of this particular amendment is the ability to grandfather the experience of people into the licence so that they don't have to go through the training all over again, or the awareness program, I should say.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: Of course, it's not surprising, I concur with the third party's motion once again. I don't know if there's anything further to say. We've already talked about the need for this style of substantial amendment in the previous amendment. We heard the government's view last time.

I do think it's important, though, to reiterate once again the role of committees in a democracy, and I'll put it this way: We held out a carrot to all those people who came to committee with the expectation that their thoughts and ideas would have some influence. I really do think it's atrocious that we've encouraged people to come to all these committee hearings across the province, they spent time and money to get here and none of it is being accepted. There's a tin ear and an "I don't care" type of attitude. These are reasonable amendments. I really have to impress as much as possible on the government side to actually have some care and interest in what all those people did, coming to these committee hearings and working with the third party and the official opposition to provide amendments to make this a better bill and actually improve mining and allow for greater prosperity in mining.

It's a very reasonable amendment. Again, somebody who has had it for 10 years is obviously aware of what they're doing. It's a reasonable amendment; I support it completely.

The Chair (Mr. David Oraziotti): Any further comments? Mr. Brown.

Mr. Michael A. Brown: Currently there is a 25-year requirement. We don't exactly understand any reason to change that now. Current lifetime prospectors will take the program once within two years of the bill passing; then it won't be required again. There is provision for the minister to waive even that requirement. We believe this is totally reasonable and totally consistent with what we've been hearing out there.

I do take some exception to the idea that if we don't agree with you, we didn't listen. I don't think that necessarily follows.

The Chair (Mr. David Oraziotti): Further comment. Mr. Bisson.

Mr. Gilles Bisson: Just a clarification on what the parliamentary assistant said. You're saying that under the act, the minister will have the authority to do what? The minister can waive the requirement for the prospectors' awareness program? Is that what I understood? Can we call the—

The Chair (Mr. David Oraziotti): Yes. Just a second, Mr. Bisson. If you'd like to come forward and have a seat, please. State your name for the purposes of Hansard, and you can provide any information that you feel is appropriate.

Ms. Catherine Wyatt: Hello, it's Catherine Wyatt. I'm counsel with the ministry.

I believe Mr. Bisson is asking about the transitional provision—

The Chair (Mr. David Oraziotti): Please speak into the microphone.

Mr. Gilles Bisson: Maybe I misunderstood what the parliamentary assistant said, so I just want to clarify what I heard, just to explain what I'm asking.

What I thought I heard the parliamentary assistant say is that there is in the bill and there was in the current bill the ability for the minister to issue a licence—that, I understand as being in the old bill—but that you will be able to do that in this new bill without a requirement of the prospectors' awareness program? Did I understand that correctly?

Ms. Catherine Wyatt: In the current act, of course, there are the provisions for issuing, but not the prospectors' awareness program—that's the new part. What the bill has in it is a transition provision that says that every licensee, including a prospector who has become a lifetime prospector before the day this subsection comes into force, will successfully complete the prospectors' awareness program within two years. So we've built in a two-year period for current people who already have a licence to take this program.

Mr. Gilles Bisson: I understand.

Ms. Catherine Wyatt: Then we've provided, in subsection (10), a proposal that the minister, at his or her sole discretion, may waive the requirement in subsections (6), (7) or (9)—and (9) is the transition provision I've just read to you. It also means it can be waived in the instance of someone who's getting a lifetime renewal under subsection (6) or the discretionary lifetime renewal under subsection (7).

Mr. Gilles Bisson: Give me a second just to read that. So (6) is a lifetime renewal by the minister, right?

Ms. Catherine Wyatt: Right.

Mr. Gilles Bisson: And (7) is "renew the licence of a person without fee ... licence remain in good standing during the lifetime...."

Ms. Catherine Wyatt: There are two lifetime renewal provisions in the act now: One is automatic on the 25 years, and the other one was a discretionary one.

Mr. Gilles Bisson: So the minister can grandfather, technically.

Ms. Catherine Wyatt: The minister can waive this requirement.

Mr. Gilles Bisson: Am I understanding that correctly?

Mr. Randy Hillier: The way I'm reading this, subsections (6) and (7) in the original act are repealed and replaced with essentially the same wording; however, it includes the condition that a prospector's awareness program and licence are completed within 60 days before, is that right? "The minister shall renew without fee the licence of a person who has held a licence for 25 years provided that the person successfully completes the prescribed prospector's awareness program within 60 days before the renewal." That's very similar to (6) and (7) in

the original act, except it adds the prospectors' awareness program, is that right?

Ms. Catherine Wyatt: Right.

Mr. Randy Hillier: So after 25 years you can grant a lifetime renewal after they've completed the prospectors' awareness?

Ms. Catherine Wyatt: Right.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Bisson.

Mr. Gilles Bisson: Yes. I'm just going to walk through. It is grandfathering, but it isn't, now that I've figured it out. You have the automatic renewal at 25 years, and what you pointed to—what was it again?—

Ms. Catherine Wyatt: Subsection (10).

Mr. Gilles Bisson: —gives the minister the authority to say, for the person who's renewed automatically after 25 years, "Okay, you don't have to do the prospectors' awareness program." Then, under subsection (7), for anybody who currently has a licence and applies for a renewal, the minister can also waive the requirement for the prospectors' awareness program—only for a renewal. That's what (7) is, right?

Ms. Catherine Wyatt: Well, (7) isn't actually a repetition of the existing section, which provides for not just anybody on a renewal but a specific lifetime exemption for certain people. This is a power for the minister to create a new kind of lifetime prospector—not the 25-year folks but anyone, regardless of whether they've put in 25 years or not, can be made a lifetime prospector.

Mr. Gilles Bisson: Oh, I see what you're saying. It's not the regular prospectors' licence; it's a licence that's either a 25-year, and you automatically become a lifetime, or the minister declares you to be a lifetime prospector, and in those cases the minister can waive the need to pass the prospectors' awareness program.

Ms. Catherine Wyatt: Yes.

Mr. Randy Hillier: I'm getting more confused.

Mr. Gilles Bisson: I understand it now, but I'm a little bit lost, because the government is saying in the bill that it's prepared to grandfather those particular classes of individuals. What it does, basically, is give the ability to the minister to, in a way, grandfather certain classes of prospectors. So why wouldn't we go all the way? That would be my question. You've already set the precedent, right?

The Chair (Mr. David Oraziotti): Any further comments? Mr. Hillier.

Mr. Randy Hillier: Subsection (7) in the Mining Amendment Act says, "The minister may, at his or her discretion, renew the licence"—so you have to have a licence—"of a person without fee and order that the licence remain in good standing during the lifetime of the licensee."

Mr. Gilles Bisson: It's a lifetime licence.

Mr. Randy Hillier: Yes. You've got to have a licence first, because it's provided that the person successfully completes the prescribed prospectors' awareness program within 60 days before the renewal. That's what the act says. So in order to get that and use that discretion, the

person needs to have a licence now and needs to have completed the prospectors' awareness program. It's not a different type of licence; it's just that the minister, if he or she chooses, can renew the licence for life after those conditions have been met, right?

Ms. Catherine Wyatt: In answer to his question, yes.

The Chair (Mr. David Oraziotti): Any further comments? Mr. Bisson.

1650

Mr. Gilles Bisson: Would the parliamentary assistant be amenable to an amendment to subsection (10), where you say "the requirement under subsection (6), (7) and (9)," but add into that subsection 7(1), which is, "Any person who is 18 years or older is entitled to obtain a prospector's licence...." You would allow the minister—no, you wouldn't want to, in that case. I withdraw that. No, no. I'm trying to get at the class of licence that already exists, and it's not under subsections (6) or (7), right? A new licence is subsection 7(1). Where is the existing licence?

Ha! You wrote the bill and you've got to look. This is pretty good.

Ms. Catherine Wyatt: It's probably 19. Let me double-check. Actually, 18 is where the licence is required, and 19 tells you more details about it. It's actually section 7 of this bill. That's "any person of 18 years or older" is entitled to obtain a prospector's licence—that's the requirement to obtain the licence—and then you'll find the renewal of the licence in section 8 of this bill, which is subsection 21(1) of the act.

Mr. Gilles Bisson: Okay. I'm not going to get into drafting how it happens, but my point and my question to the parliamentary assistant is, it would appear, as I read the bill, that the minister gives himself or herself the ability to grandfather certain classes of lifetime licences either by the 25-year trigger or the trigger of the minister issuing it. Why wouldn't we expand that same ability to those who currently have licences and have a certain threshold, let's say, 10 years, 15 years or whatever?

Mr. Michael A. Brown: I think the minister will have discretion to make this work. It's not necessarily a grandfathering approach and not necessarily to a class of licence. I think what this does is allow the act to have some flexibility and not be totally arbitrary. I think that is a good thing for legislation, and I think most of us would agree. We are satisfied that the lifetime should be 25 years; it has been and should be. In my profession, it's 40 years, I believe, and maybe 65.

Mr. Gilles Bisson: What profession is that?

Mr. Michael A. Brown: I know it's not directly related—

Interjection.

Mr. Michael A. Brown: Yes, exactly.

Mr. Gilles Bisson: And those are your friends.

Mr. Michael A. Brown: We'll tell you about that one later.

It's different in lots of different professions. You can use lots of analogies out there for how different professions, different occupations, different trades deal with

this. This one, the 25-year requirement, has traditionally been used in Ontario, and we think that's reasonable. There is some discretion here. I think it would mean that any government, not just us, would see this as an opportunity to have some discretion in how we do this if the need arises out there. I think that makes some sense. I think it makes more than some sense; I think it makes a great deal of sense.

The Chair (Mr. David Oraziotti): Mr. Bisson.

Mr. Gilles Bisson: I totally agree with you; you're right. I totally agree with you that it's good to have legislation that gives the minister discretion. I'm with you; we're in lockstep on this one. All I'm saying is that as I read that particular section of the bill, it allows the minister to have the discretion to grant a licence without the prospectors' awareness program for two classes of licensees: the licensee who became a lifetime member with the 25-year trigger and the licensee who became a lifetime member by way of section 7, or whatever it is. All I'm saying is, extend it to those people who have been in the business for a number of years and let the minister decide. The minister can do what the minister did at the beginning of this act, where the minister decided to withdraw crown mining rights on private land and did so by the authority in the act. He said, "Okay, it is time that we do this. I'm done."

What it would allow is that the minister could decide in the future, or just after this act is passed, "Do you know what? I'm going to grandfather anybody who is a licensee," or "I won't grandfather them." At least it gives you an opportunity to get it done. So why not include any class of prospector who is currently a prospector for a certain number of years, not just lifetime? Why don't we do that? I think that would be a reasonable approach.

Mr. Michael A. Brown: Obviously we disagree.

Do you want to try it now?

The Chair (Mr. David Oraziotti): Yes. Any more discussion on the amendment?

Mr. Randy Hillier: I still believe, Gilles—those two classes with the ministerial discretion still require the completion of the prospector's awareness program.

Mr. Gilles Bisson: Excuse me, so—

Mr. Randy Hillier: That's under—

The Chair (Mr. David Oraziotti): Just one at a time, folks.

Mr. Gilles Bisson: I'm sorry, Chair—all due respect.

The Chair (Mr. David Oraziotti): No problem. Mr. Hillier, do you want to finish up?

Mr. Randy Hillier: Yes. Subsections 8(6) and (7)—one has a 25-year criteria. That's (6), but it's followed by, "that the person successfully completes the prescribed prospector's awareness program," right?

Mr. Gilles Bisson: But both are lifetime licences.

Mr. Randy Hillier: Yes, but they'll still have to complete that prospector's awareness program before they—

Interjection.

The Chair (Mr. David Oraziotti): Okay, let's turn it over here. Mr. Bisson, go ahead.

Mr. Gilles Bisson: To Mr. Hillier: If you go to subsection 8(10), "The minister in his or her sole discretion may waive the requirement" of "subsection (6), (7) or (9)," which are the lifetime licences. So my argument is, in a way, it's grandfathering. The minister has the ability to grandfather those people who have lifetime licences of either class. All I'm saying is, let's give the minister that ability for anybody who has a prospector's licence, period, over a certain amount of time, because we're already doing it. Why not just take the other step?

Mr. Randy Hillier: Yes.

The Chair (Mr. David Oraziotti): Okay, both points were made, I think. Mr. Brown, do you care to respond to that?

Mr. Michael A. Brown: No.

The Chair (Mr. David Oraziotti): Okay, thank you. Any further comment or discussion?

Mr. Gilles Bisson: I have one question before we—

The Chair (Mr. David Oraziotti): Okay, Mr. Bisson, go ahead.

Mr. Gilles Bisson: Just so that I'm clear, the minister will have that ability for all lifetime licences only, right? To the counsel: It's only lifetime licences, right?

Ms. Catherine Wyatt: What subsection (10) does as well is, it includes the transition requirement in subsection (9). So just to be clear about that, it's the two kinds of lifetime. This once-only transition provision could be waived, and that may apply to people other than lifetime.

Mr. Gilles Bisson: Okay, so a—

Ms. Catherine Wyatt: The transition is there to catch people who already have a licence. They're going to have two years to do it, but because they have to renew their licence once every five years anyway, there may be people who have just renewed a licence, and we're filling in some flexibility for those people who would be caught in this transition provision to not necessarily have to do it.

Mr. Gilles Bisson: I'm halfway to where I want to go here. I'm going to argue myself into a corner.

My question is, which type of prospector's licence could not be subject to subsection (10)? A brand new one, right? A brand new prospector. What would be the other?

Ms. Catherine Wyatt: Certainly, after the initial two-year transition period, anybody who is regularly renewing their licence.

Mr. Gilles Bisson: Okay. I'm fine.

The Chair (Mr. David Oraziotti): Any further comments or questions? Okay. NDP motion number 9: All those in favour?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): That was the last one—

Mr. Gilles Bisson: Yes, I'm asking you to record this.

The Chair (Mr. David Oraziotti): Recorded vote on this as well; okay. And Mr. Hillier? Okay.

Ayes

Bisson, Hillier.

Nays

Brown, Kular, Mangat, Mauro, Mitchell.

The Chair (Mr. David Oraziotti): The motion is lost. All those in favour of section 8? All those in favour? Opposed? Okay, it's carried. Section 8 is carried.

If we can deal with sections 9, 10 and 11, there are no amendments proposed there. Shall sections 9, 10 and 11 carry, as is?

Interjections.

The Chair (Mr. David Oraziotti): Section 11.1 is separate. Shall sections 9, 10 and 11 carry, as is? All those in favour?

1700

Mr. Gilles Bisson: Question?

The Chair (Mr. David Oraziotti): Go ahead, Mr. Bisson.

Mr. Gilles Bisson: As I'm going through subsection 9, I understand—"destroyed or lost, the holder may"—yes, okay. Thank you.

The Chair (Mr. David Oraziotti): Okay. Nine, 10 and 11: All those in favour? Opposed? Okay, it's carried; sections 9, 10 and 11.

All right, Conservative motion 9.1. New section, 11.1. Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that the bill be amended by adding the following section:

"11.1 The act is amended by adding the following section:

"Prohibitions

"27.1 Despite any other provision in this act,

"(a) no new mining claims shall be permitted on the land where this is a surface rights owner;

"(b) no private lands that were granted in fee simple by the crown shall be confiscated under this act unless the grant specified that the land be used for mining purposes or that the lands would revert to the crown; and

"(c) mining land tax shall not be levied under part XIII on any lands or minerals unless,

"(i) the patent documents for the lands or minerals specify that the lands or minerals will revert to the crown if they are not used for mining purposes,

"(ii) the property is not subject to municipal taxation, or

"(iii) the minerals are owned by a different person than the person who owns the surface rights."

The Chair (Mr. David Oraziotti): Your comment on that?

Mr. Randy Hillier: I think probably most people will see where I'm going with that amendment; we've talked about it many times. This puts the authority back to the surface rights owner instead of under Bill 173 as it is right now, where the minister has discretion to allow mining on properties where there's a surface rights owner

and the crown owns mineral rights. This would put it back into the surface rights owner's authority.

It also reinforces the original and the legislative expectation of the mining tax: that the mining tax is applicable to those properties that are not subject to municipal taxation and that the mining tax is only levied if there is indeed mining on that private property.

As we've heard during those committee hearings of examples where the mining tax has been levied inappropriately, in places where there's no mining activity on that private land and in a municipality, what happens is, the individual is subjected to two taxes on one property or allows those mineral rights to revert back to the crown, if he doesn't want to pay two levels of taxation on the same property. That's what this amendment sets out to do: prevent a single property from being subjected to two levels of taxation and put the ownership or the consent not in the minister's hands but in the surface rights owner's hands as to whether or not there should be mining on that property.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Brown.

Mr. Michael A. Brown: To the first part: The government bill, the bill before us, would automatically withdraw private lands in southern Ontario by application to the minister of surface rights holders in the north, effectively making this proposed amendment unnecessary, in our view. It has already happened.

The second part of the motion—I understand that the motion is also trying to address issues related to the mining land tax. We are proposing to address these issues elsewhere in the bill under section 90, including a possible tax exemption which we believe should address concerns raised by certain property owners regarding this tax.

So I guess what we're saying, Mr. Hillier, is, in the first part of the amendment, our solution is there already. In the second part, we could talk about it when we get to section 90.

Mr. Randy Hillier: Do you have a motion for the mining tax included in the package for section 90? Is that what I—

Mr. Michael A. Brown: It's in the bill, as it stands.

Mr. Randy Hillier: Let me take a look at that, but to the first part, you said that this is unnecessary, but—let's see if I can frame this up properly—at the present time, I understand that this bill would withdraw that potential of staking and exploration on private lands in southern Ontario. However, the ultimate authority to grant exploration or claims on those lands still rests with the minister. The minister, at his discretion, can withdraw the withdrawal on certain lands, right? That's pretty clear. The minister still keeps that discretion. What I'm seeing in this first part of the bill is, the minister would not have that discretion to withdraw his withdrawal.

I'll take a look at section 90. I don't believe I saw anything in 90 that addressed the second part of that amendment.

Mr. Michael A. Brown: Would you like counsel or the ministry to explain that to you?

Mr. Gilles Bisson: I sure would.

Mr. Randy Hillier: Yes.

Ms. Catherine Wyatt: Are we starting with—

The Chair (Mr. David Orazietti): Just state your name again.

Ms. Catherine Wyatt: Sorry; Catherine Wyatt, counsel for the ministry. Are we starting with the withdrawal part of this?

Mr. Randy Hillier: We can start with the withdrawal. I'm fairly clear on that; I'm not sure if everybody else is. If I'm incorrect in my assertion that the minister can withdraw the withdrawals, then certainly, clarify that.

Ms. Catherine Wyatt: Yes, that does seem to be something we heard. In fact, the withdrawal for southern Ontario is in the act. It's not by a minister's order, and the act says when those lands will be automatically withdrawn. The act provides for one method of having those lands reopened, and that is when the surface rights owner requests the minister to reopen them.

I think if you look at 35.1—I'm not sure which section that is in the bill.

Interjection.

Ms. Catherine Wyatt: Is it? Okay. I'm just getting there. All right, 35.1 is at section 15 of the bill?

Mr. Randy Hillier: Yes, 35.1, and then the exceptions.

Ms. Catherine Wyatt: Well, 35.1, for southern Ontario—the exception is dealing with existing mining claims that are already there. So what it's saying is that this automatic withdrawal in southern Ontario is not going to cut off existing mining claims, and that's what the exception is. I don't think we've come to this yet. We were doing some change-around as to how the reopening was going to work in this situation—

Mr. Randy Hillier: I'm confident—

Ms. Catherine Wyatt: —but the idea being that it's legislated how it can be reopened, and that way is only going to be when the surface rights owner requests it, so it's not that the minister can take this away without amending the act, should it pass.

Mr. Randy Hillier: I'll take a little bit more of a look. When I read through this, I saw a further exception, but I will have to take a look and see.

Ms. Catherine Wyatt: Yes. Because it's broken up into southern and northern Ontario, there's an exception for southern Ontario and an exception for northern Ontario, so there may have been some duplication there.

1710

Mr. Gilles Bisson: May I ask a question, Mr. Chair?

The Chair (Mr. David Orazietti): Go ahead, Mr. Bisson.

Mr. Gilles Bisson: Either to Mr. Hillier or to the counsel: If I understand 27.1(a), that would apply to both northern and southern Ontario, the way it's written?

Mr. Randy Hillier: Yes.

Mr. Gilles Bisson: Okay. That's what I needed to know. Thank you.

The Chair (Mr. David Orazietti): Any further comments? Seeing none—

Ms. Catherine Wyatt: There was the question about the tax, wasn't there?

Mr. Randy Hillier: About the mining land tax.

The Chair (Mr. David Orazietti): Okay. Go ahead.

Ms. Catherine Wyatt: The lands liable for tax now in the act are set out in section 189 of the act. What we have proposed in section 90 of the bill—it talks about the availability of an exemption from tax in certain situations.

Mr. Randy Hillier: Hold on. Let me just get to—you said 189 of the act?

Ms. Catherine Wyatt: Of the act—is where the tax liability. I'm referring you to that because section 90, of course, refers to the existing act.

Mr. Gilles Bisson: What page are we looking for in the proposed bill?

Ms. Catherine Wyatt: We're looking for section 90 in the proposed bill, which—

Interjection.

Ms. Catherine Wyatt: Quatre-vingt-dix.

So, as you see, it's going to cross-reference back. It's talking about certain situations where lands have been originally patented for mining purposes—

Mr. Randy Hillier: Okay, let me just get to section 90 here. We've got section 189—

Ms. Catherine Wyatt: Right.

Mr. Gilles Bisson: Excuse me, can I ask another question?

The Chair (Mr. David Orazietti): Go ahead, Mr. Bisson.

Mr. Gilles Bisson: Subsection 90(2) is the northern mechanism, right, 90(2)(1.1): "Where lands or mining rights described in clause (1)(a) or (c) are not used for mining purposes...." We're talking about lands in northern Ontario here, right?

Ms. Catherine Wyatt: It's anywhere they're liable for mining tax. It's not—

Mr. Gilles Bisson: Oh, I see. Okay. All right, thank you.

Ms. Catherine Wyatt: It's province-wide.

Mr. Gilles Bisson: Okay.

Mr. Randy Hillier: Why have I lost the section?

Mr. Gilles Bisson: It's page 43. Page 43 is 90(2), and everything's there. "(1) Whether there is evidence satisfactory to the minister that the lands and mining rights currently...." Yes, page 43. So can I ask a question, then, to counsel, as my colleague here is looking up information?

If I understand correctly, what this amendment would do is basically treat all classes of land the same, north versus south, right?

Ms. Catherine Wyatt: It already applies throughout the province, so that's not a change. The tax is the tax.

Mr. Gilles Bisson: Maybe I need to rephrase: Section 27.1, "(a) no new mining claims shall be permitted on any land where there is a surface rights owner."

Ms. Catherine Wyatt: Are we going back to the motion? I'm sorry.

Mr. Gilles Bisson: Yes, back on the motion here. So on the PC motion, 27.1—I'm just giving you a chance to catch up here—clause 27.1(a) means north and south, right? That's how I would read it.

Ms. Catherine Wyatt: It's not my motion, but I understood Mr. Hillier to say it applies throughout the province.

Mr. Gilles Bisson: Okay. So then my question to counsel is, how does this significantly change the application of the tax? This particular regime, under (c)—maybe Mr. Hillier or the counsel can explain to me—there's currently a bit of a convoluted way of applying the mining land tax. We went through this whole conversation the other day and I don't pretend to—well, I can actually give an explanation; I understand it now. How would this actually change it? Mr. Hillier, how would it change it?

Mr. Randy Hillier: To clarify that: For people who have patented lands, no mining tax can be levied against that property unless minerals are being extracted from it, and also if it's not subject to municipal taxation.

Mr. Gilles Bisson: My question, then, to counsel or to Mr. Hillier: How is that different than what we have now, currently? It wouldn't apply to a lot of land, from what I can figure.

The new proposed amendment from Mr. Hillier, at the end of the day, would help that small percentage of land where those mining land taxes are being applied. It would just catch everything, right?

Ms. Catherine Wyatt: I'm afraid we might have to ask Mr. Hillier to explain it. I'm not sure—

Mr. Randy Hillier: Subsection 189, which is dealing with the tax component of this, in the act—

Mr. Gilles Bisson: In the current act? Okay, I've got you.

Mr. Randy Hillier: Okay. Section 90 strikes out “or lessee” in the portion after clause (e). Under this act right now, we're also adding in the following subsections: 90(2)(1.1)—and lists five other clauses. That's on page 43. So we're just making it simplified.

Mr. Gilles Bisson: That's how I'm reading it, and I'm trying to figure if we're missing anything here. That's what I'm asking either you or counsel. I take it as your view, Mr. Hillier, that the amendment as written by the one that you've tabled, 9.1, would simplify the regime from what we have now and would apply to all privately owned land to which there are or are not mining rights associated—the long and the short of it.

Mr. Randy Hillier: If you refer back to page 43, you may apply to the minister for an exemption from that tax. This is saying these properties are—you don't have to apply for an exemption; they are exempted.

Mr. Gilles Bisson: My question to you, then, is: How much property would this benefit? Is that the 1.4% that we always talk about?

Mr. Randy Hillier: Yes.

Mr. Michael A. Brown: No.

Mr. Gilles Bisson: That's why I'm a bit confused. That's why I'm asking the question. So it's all. It would be above the—

Ms. Catherine Wyatt: No, the 1.4% that I think you're referring to is the number that has been used to describe where surface rights are held separately than mining rights throughout the province. That's not necessarily what we're talking about here.

Mr. Randy Hillier: That's the greatest component, is that 1.4% or 1.6%. We've heard that number banded around a little. That's a big component.

Interjection.

Ms. Catherine Wyatt: But, see, the 1.4% applies to people who don't own the mining rights, and if they don't own the mining rights, they're not going to be taxed on them. They're not taxed now, is what I'm trying to say.

Mr. Randy Hillier: I'm suggesting to you that indeed they are taxed now.

Ms. Catherine Wyatt: Not if you don't own the mining rights. Mining land tax only applies if you're the patented owner of the mining rights, from a private person's perspective—

Mr. Randy Hillier: That's right. If you're not extracting the minerals, then the tax would not apply, even if you own the mineral rights.

Ms. Catherine Wyatt: This is what we're trying to amend in section 90. The way the act reads now, and it's very convoluted, as Mr. Bisson can attest to, if your original patent from the crown was for mining purposes—and some of that language appears in your motion, which is interesting—and even if you're not now using those mining rights to extract minerals or for mining purposes, you are subject to a tax.

Mr. Randy Hillier: Maybe I'll try to explain it this way. This motion is essentially the same as what's in Bill 173. Let me read what's in Bill 173: “The registered owner of the lands or mining rights may apply to the minister for an exemption from the tax under this part and the minister may grant an exemption taking into account the following criteria”—and that's whether or not there is mineral content, whether the lands are being used for mining, whether there are rehabilitation concerns etc. What we're seeing here is that the person would not have to apply for an exemption; the minister would not have any choice. If the lands are not being used for mining and if they are in a municipality, then that mining tax doesn't exist for that person—or for that property, I guess would be more appropriate.

1720

The Chair (Mr. David Oraziotti): Any further debate? Mr. Brown, go ahead.

Mr. Michael A. Brown: I think, to be helpful, we have already indicated that we think the withdrawal of rights on private lands in southern Ontario addresses these issues. As we get farther on in the bill, there might be further opportunity, Mr. Hillier, but we will not support your motion in any event because we believe it has already been addressed through the withdrawal of the

rights to stake in southern Ontario and the ability to apply to the minister to have them withdrawn in northern Ontario. Maybe a further discussion at some other time might help you before we get to the end of this.

Mr. Randy Hillier: I'll get back to the surface rights in the north and south afterwards, but where these lands are not used for mining purposes and there are no existing mining claims, leases, licences or occupation on the lands, the registered owner of the lands or mining rights may apply to the minister for an exemption from the tax. That's where I'm focusing on here. If the lands are not being used for mining, then they ought not to be subject to a mining tax. It's fairly simple.

If it's in an unorganized district where there is no municipal taxation, then this would still allow it to be taxed with the mining tax. That's the intent, I think, of what the government is trying to achieve here. But all I'm saying is, in this motion, it doesn't put the onus on the private landowner to go through the system to apply for an exemption; it is exempted already. If the individual who owns that property in the future undertakes mineral exploration and extraction, then it would be subject to the mining tax.

Going back to the first part, the other reason why this was put in here about the surface rights owners is treating southern property owners and northern property owners in the same fashion; that the same laws would apply to private landowners north and south and that there would be no ability for the crown to reopen or withdraw withdrawals or the onus for the individual owner to have the mining thing withdrawn from the north. It would be included in the bill that the private landowner in the north is as protected as the private landowner in the south.

Mr. Gilles Bisson: I understand clearly—I think I do. But here is the question I have. What we are now doing with what the minister did earlier this spring is to say to anybody in southern Ontario who owns private land to which there are crown mining rights that those mining rights are withdrawn—not private land. If it was private land to which the person owned the mining rights, those mining rights still exist. So my question to the counsel or somebody from the ministry is: What percentage of people who own land privately also own mining rights? There should be a whole bunch of it, right? Do you follow where I'm going?

Ms. Catherine Wyatt: I'm not sure, but generally speaking, when you get title to land, you get everything.

Mr. Gilles Bisson: That's right.

Ms. Catherine Wyatt: You get surface, the mining, the whatever. You get the whole ball of wax.

Mr. Gilles Bisson: But a vast majority of private land owned would have people who own the private land but also own the mineral rights. The issue is, nobody can mine on that land without their permission, because they own both the land and the mining rights.

I understand this amendment to say that those lands would not be subject to a mining land tax. That's what's being asked for in this amendment. In effect, what you're going to end up with is a private-property owner who

owns the mining rights, who says, "I don't want to pay anything for those mining rights."

I assumed what you were trying to do originally was to deal with, first of all—that north and south be treated the same when it comes to private land to which the crown owns the mining rights. That's what I understood you were trying to do originally. And number two, that—well, there was no number two; that was just number one.

What this is going to do is eliminate the mining land tax, right?

Mr. Randy Hillier: On properties that are not being mined.

Mr. Gilles Bisson: Yes, for all private property, but the person will still hold the mining rights.

Mr. Randy Hillier: Sure.

Mr. Gilles Bisson: They would still—

Mr. Randy Hillier: Yes. Let me just—we know that—

Mrs. Carol Mitchell: My hand was up. I am in the rotation, and I'd like to speak.

The Chair (Mr. David Oraziotti): You are. Mr. Bisson is finished.

Mr. Gilles Bisson: I'm done. I figured it out.

The Chair (Mr. David Oraziotti): You've got the floor, Ms. Mitchell. Go ahead.

Mrs. Carol Mitchell: Thank you, Chair. I just want to bring to the committee's attention that it was duly moved by the committee that two days were set aside for clause-by-clause. We now are on clause 9.1. It's almost seven hours that we've been debating, so that's almost an hour per clause. We have, in total, 57. I just want to bring to attention to the fact that, in very short order, we are going to be debating how the rest of the clauses will be dealt with.

It was duly moved by this committee that two days would be adequate time for clause-by-clause. I guess if more time is needed, we really do need to look at a process that's going to facilitate it. We encourage the discussion, but an hour per clause—and I would ask the clerk: I know that the legislative calendar is very heavy, so if this is not dealt with in this manner, what, then, goes on hold? Is there not private members' business that is being contemplated?

The Chair (Mr. David Oraziotti): Okay, thanks for that. Mr. Bisson, do you want to comment on this or are you—

Mr. Gilles Bisson: I sympathize with your argument, to Madam Mitchell. I hear what you're saying. However, two things: One, I didn't vote in favour of this being limited to two days, so don't categorize it that the committee agreed—

Mrs. Carol Mitchell: I didn't say "you."

Mr. Gilles Bisson: I was actually recorded as opposed, okay? I just want to make sure the record shows I've never agreed to that. Two, we're into the substantive parts of the bill, and a lot of the other stuff that's going to flow later, I think, is going to be a little bit easier.

The big stuff is the rights for First Nations to be able to determine what happens on their own traditional

territory, the whole issue of mining rights—and Mr. Hillier, we know, has been at the forefront of this issue for a long time—there was the grandfathering and there might be a couple of others. So, yes, we spent a fair amount of time at the beginning dealing with what are pretty substantive parts of the bill, so don't think that—I'm certainly not trying to be deleterious here. I'm just trying to do my job.

Let's keep in mind that this is a fairly technical bill. Here is somebody from northern Ontario, who has been around the mining industry for a long time, getting into conversations with counsel, and counsel and I are having a bit of a hard time trying to figure out this bill from time to time. It's no disrespect—

Mrs. Carol Mitchell: No.

Mr. Gilles Bisson: No, but I'm saying, no disrespect.

Mrs. Carol Mitchell: You have the ability to be briefed. You have the ability to go through it with legal counsel.

Mr. Gilles Bisson: By my point is, it's a fairly technical bill, and we're just trying to do our jobs here. This particular motion that we have before us—I'm now understanding it to be quite different than what I thought Mr. Hillier wanted at the beginning. It's an extinction of mining land tax on all private lands, and I think that's an interesting debate. I had not looked at that. I thought we were just trying to deal with certain classes of land. But anyway, if we need more time, we'll take more time. That's all.

The Chair (Mr. David Oraziotti): All right. Any further comment? Mr. Hillier?

1730

Mr. Randy Hillier: I'll go back to clarification on this amendment once again. Just for everybody, approximately 98% of the private lands in this province are joined—they have unified mineral and surface rights.

Interjection.

Mr. Randy Hillier: No. In 98% of the private land in this province—period.

Interjection.

Mr. Randy Hillier: Well, no—

Interjection.

Mr. Gilles Bisson: Sorry about that, Chair.

The Chair (Mr. David Oraziotti): It's not being recorded.

Mr. Randy Hillier: My numbers may be off by fractions, but about 13% of the land mass in this province is private land. The rest is crown-owned. Of that private land, 98 point something of it has mineral and surface rights combined. We're dealing with a small fraction of the land mass. However, those people, that 1.5%, are treated in a very significantly different fashion than the 98%. That's just for clarification. This amendment would treat all private landowners, whether in the south or the north, with equality of rights—all private landowners, north and south—and that their lands would not be taxed if they're not mining that property. It's a fairly well-defined—it simplifies, so that in future, when the staff of MNDM goes to explain the mining tax etc. and what the

differences are between mineral rights and surface rights, there will not be that onerous discussion and it would be fairer.

Mr. Michael A. Brown: Just to be helpful, Mr. Hillier—or maybe not helpful—you refer to landowners in southern Ontario and landowners in northern Ontario. It doesn't have anything to do with the owners; it has to do with where the land is. If the land is in northern Ontario, it is treated in one way; if it's in southern Ontario, it's treated another way. But I can own land in southern Ontario and you can own land in northern Ontario. It's not about who owns it; it's about the land itself.

Mr. Randy Hillier: I would say to the parliamentary assistant: The land doesn't pay the tax. It comes out of a real, live, warm body and his pockets. Your ability to authorize and exercise use and enjoyment of that property can only be exercised by a real, live, warm body, not by the land itself. This is protection of individuals' property, freedoms and rights and applying the law equally. No matter where you live in this province or where your properties are in this province, you are treated equally. Under the present bill, Bill 173, you and your lands are treated differently depending on where those lands are located.

Mr. Michael A. Brown: I disagree. It is about where the land is, not where the person who owns the land is. That's what the bill does, right?

Mr. Randy Hillier: No.

The Chair (Mr. David Oraziotti): Do you want to provide a response, counsel? Go ahead. If you could add some clarity to the situation, that would be helpful.

Ms. Catherine Wyatt: I don't know; we will see. This amendment seems to be convoluting a couple of different concepts. There seems to be this idea of the withdrawal of mining rights from any ability to stake a mining claim, which is one piece, and that only applies where there are crown mining rights, and there is a different treatment proposed for southern and northern Ontario. That's true. Tax has nothing to do with whether you're in northern or southern Ontario, right?

Mr. Randy Hillier: That's right.

Ms. Catherine Wyatt: Okay. So just in case people were getting confused that we're saying there's a different tax treatment depending on whether you're north or south—that's not the case.

Mr. Randy Hillier: Same, yes.

Ms. Catherine Wyatt: If you're an owner of lands—and most of them do include the mineral rights and obviously nobody can mine that without your permission. If somebody is mining it, you're taxed. If you sell the mining rights to somebody else, they're taxed if they're using the mining rights. There is a provision in here, however, for people who own surface and mining rights, aren't using the mining rights for mining purposes and are still being taxed. We're trying to get rid of the tax for those people by offering this exemption, north or south.

I don't know if that helps.

The Chair (Mr. David Orazietti): Mr. Hillier, does that help?

Mr. Randy Hillier: Fine.

Mr. Gilles Bisson: Can I ask you a question?

The Chair (Mr. David Orazietti): Counsel, Mr. Bisson has a question.

Mr. Gilles Bisson: So the last point that you made: You're trying to provide that by giving them the ability to apply to have the mining rights removed if they own the private—

Ms. Catherine Wyatt: To get the lands exempted from the tax.

Mr. Gilles Bisson: Yes.

Ms. Catherine Wyatt: Right. And in order to do that, the minister is going to be looking at whether, in fact, the mining rights are being used for mining purposes or not, among other things.

Mr. Gilles Bisson: Let me rephrase it this way: If I own property in northern Ontario, under the act as drafted, I can apply to have the mining rights removed. It's not crown mining rights; they're my mining rights. I own the property and I own the mining rights. Under the proposed bill, I can apply to the minister to have the mining rights removed.

Mr. Randy Hillier: No.

Mr. Gilles Bisson: I thought that's what you were just saying. All right; that's why I asked for clarification. I read the bill and I didn't see that. Okay, got you.

Ms. Catherine Wyatt: No, you can apply to have the lands exempt from mining tax.

Mr. Gilles Bisson: But you would hold the mining rights.

Ms. Catherine Wyatt: Yes, but they're two entirely different things.

Mr. Gilles Bisson: No, I understand. You would not lose your mining rights; you would just apply not to have the tax applied. Later, if you decide to bring the land into production, then you would have to pay a mining land tax. I understand that. Good, thank you. Got it. I thought you said something different.

Mr. Randy Hillier: Just for clarity, this would just remove those lands from taxation first and wouldn't put the onus on the property owner to apply for that exemp-

tion for the mining tax. It would treat all properties in the same fashion, north or south.

The Chair (Mr. David Orazietti): The motion that's before us is a new section, 11.1. It's numbered as 9.1 in your package, but we're actually voting on the new section, which is all one motion.

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for.

Mr. Randy Hillier: And take a 20-minute recess.

The Chair (Mr. David Orazietti): Okay, a 20-minute recess will take us to two minutes before 6 o'clock.

The committee recessed from 1738 to 1758.

The Chair (Mr. David Orazietti): I call the committee back to order. We had a recorded vote called for on adding the new section, 11.1, which is Conservative motion 9.1 in your package.

Ayes

Hillier.

Nays

Brown, Kular, Mangat, Mitchell.

The Chair (Mr. David Orazietti): The motion is lost.

The last item of business before committee adjourns today: I understand we have agreement from the committee that next Wednesday we will continue with Bill 173 at our scheduled time, and amendments that are scheduled to be entered for Bill 191 will be at the regularly scheduled time that was agreed on.

Mr. Gilles Bisson: One other question: We can still file amendments on Bill 191 up until the date that we start the clause-by-clause, right?

The Chair (Mr. David Orazietti): Yes.

Mr. Gilles Bisson: Okay, thanks.

The Chair (Mr. David Orazietti): Thank you very much, committee members. Committee is adjourned.

The committee adjourned at 1759.

CONTENTS

Wednesday 16 September 2009

Election of Vice-Chair	G-1031
Subcommittee membership	G-1031
Committee business	G-1031
Mining Amendment Act, 2009, Bill 173, <i>Mr. Gravelle</i> / Loi de 2009 modifiant la Loi sur les mines, projet de loi 173, <i>M. Gravelle</i>	G-1031

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Président

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Laurel C. Broten (Etobicoke–Lakeshore L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mrs. Carol Mitchell (Huron–Bruce L)

Also taking part / Autres participants et participantes

Ms. Catherine Wyatt, legal counsel, Ministry of Northern Development, Mines and Forestry

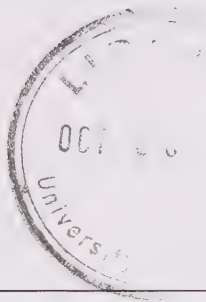
Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Catherine Oh, legislative counsel

CA22N
X016
623



**Gouvernement
Publication**

G-39

G-39

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 23 September 2009

Journal des débats (Hansard)

Mercredi 23 septembre 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Comité permanent des affaires gouvernementales

**Loi de 2009 modifiant
la Loi sur les mines**

Chair: David Orazietti
Clerk: Trevor Day

Président : David Orazietti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 23 September 2009

Mercredi 23 septembre 2009

The committee met at 1602 in room 228.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. I call the committee meeting to order, and resume clause-by-clause on Bill 173, An Act to amend the Mining Act.

We are at a proposed new section, 11.2, and it's amendment 9.2 in your package. Mr. Hillier, if you'd like to begin, go ahead.

Mr. Randy Hillier: I move that section 11.2 of the bill, section 27.2 of the Mining Act, be amended by adding the following section:

"11.2 The act is amended by adding the following section:

"Prospecting within a municipality

"27.2 The holder of a prospector's licence may not prospect for minerals or stake out a mining claim on any crown lands that are within a municipality unless prospecting or staking is consistent with the municipality's official plan."

I think it should be obvious to everybody on the committee what some of the inherent failings of Bill 173 are, and that's what this amendment is for. Bill 173, as it's presently constructed, creates three different classes of communities, different classes of citizens and property owners. We can see, in the far north, for mining and mineral exploration it has to be consistent with the First Nations community land use plans. We see that very much strengthened in Bill 191. What I'm looking at here is reinforcing the concept of equality for the law, that if it's appropriate for far northern communities to designate which properties may or may not be suitable for development, then the concept is equally applicable to the near north and southern Ontario. I think it's quite clear that the government is striving for those land use plans to include mineral exploration in the far north. If that's aiming to have equality—equal protection, equal recognition—the same should apply throughout Ontario.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Gilles Bisson: I'll let the PA go first.

The Chair (Mr. David Oraziotti): Mr. Brown, care to comment?

Mr. Michael A. Brown: As the member correctly points out, this proposed amendment effectively subordinates provincial interest in mineral development to municipal official plans. As the member would know, no crown lands are subject to official plans, period. He also would know that private lands in southern Ontario have been withdrawn from staking, so we are talking only about crown lands. You're making a distinction that I don't believe is there.

Mr. Randy Hillier: Well, let me clarify it.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: In Bill 191 it clearly indicates, and we know, that that applies to crown land—right?—and it clearly indicates the need for land use plans developed by communities in the far north. So that concept, if it's necessary to have it in the far north, should also be included in the near north, and in the south, and that deals with crown land in the far north. It's not dealing with private land; it's dealing with crown land.

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I would suggest to the member that any municipal official plans are treated the same way in the 191 area as they are in southern Ontario. There's no difference. Any municipal official plans are treated the same in the north—

Mr. Randy Hillier: In the far north.

Mr. Michael A. Brown: —in the far north, as they are in any other part of the province.

The Chair (Mr. David Oraziotti): Okay. Further discussion? Mr. Bisson, go ahead.

Mr. Gilles Bisson: I'm just wondering if I can have counsel for the ministry show up. I have a question in regard to this particular section.

Mr. Michael A. Brown: Maybe you can put the question and we'll see.

Mr. Gilles Bisson: If I could have counsel come forward, I just want to make sure that I understand how the current law works before—and maybe just stay there, because there probably will be a series of questions. Make yourself comfortable.

Mr. Michael A. Brown: Were you not briefed?

Mr. Gilles Bisson: Oh, yes, I'm briefed. I just want to make sure I properly understand this. I'm sure if I asked

you a 10-point questionnaire on this, you'd have a problem.

So to legislative counsel, and I'll give you a chance to be introduced in a second, the question is as follows:

We clearly heard at committee that there were certain people in the north who lived in communities where private lands were subject to staking. I think it was in Thunder Bay. I forget the name of the municipality; maybe somebody can help me out. I don't have my notes. It was some municipality just outside of Thunder Bay, and they were referring, as I understood it, to private lands. So on the first point, the point that the parliamentary assistant makes, how would crown lands that are within municipal boundaries, because there is such an animal, be treated under the current official plans?

1610

Ms. Catherine Wyatt: It's Catherine Wyatt for the ministry. Thank you.

Unfortunately, I'm not that well versed on municipal planning issues, as it's not our area. My understanding is that crown land within municipalities is not subject to municipal official plans.

Mr. Gilles Bisson: Okay. That was my understanding. But the private lands are, and private lands then would be subject to the official plan, would they not?

Ms. Catherine Wyatt: Again, I'm afraid I don't really know how municipal planning works to any extent.

Mr. Gilles Bisson: I've got the wrong person. I'm very sorry.

I wonder if I can ask legislative counsel to provide—I know there was a briefing note that was put together on this issue. I don't have a copy of it now. I know there was a briefing note that was prepared, asking this question in regard to how the official plan affects private lands and crown lands within municipalities. Which one trumps? I know that legislative research put together some documents, and I'm wondering if we can get a copy of that very quickly.

Ms. Catherine Oh: I don't have a copy of that. I'm not sure where it is, but—

Mr. Gilles Bisson: Yes, I know. I have it; it's in my office. I'd have to run back, and I'm just wondering if the clerk is able to get that for us. You may want to stay or you may want to go.

So to the point, then, Mr. Chair, the amendment that's put forward by my colleague Mr. Hillier: As I understand what the problem is, the parliamentary assistant is kind of right and kind of wrong. The official plan doesn't apply to crown land, and there's much in the way of crown land in many municipalities in northern Ontario. In fact, in places like where I come from or where you come from there are pretty large tracts of land that actually would be crown land. So there's some debate as to, is it desirable for people in northern Ontario to want to segregate crown land from staking within municipalities? There are people who fall on both sides of that argument. Those who, obviously, want to invest encourage mining exploration in places like Timmins—my God. Most of our mines are crown land within the municipality, so it's a bit

of a tough issue to say that we're going to exclude crown land.

But when it comes to private land, I think there is an argument to be made. My understanding of the Municipal Act—and that's why I'm looking for a bit of help; maybe Mr. Hillier can help me—is that the current municipal plans actually trump in that case. I'm just wondering if you can clarify, if you've done any work on that.

Mr. Randy Hillier: Say that last—

Mr. Gilles Bisson: Okay. There are two different issues. The last part of it is on private land: My understanding is that if I'm a private property owner within a municipal boundary, within a municipality, in fact there is an ability for the municipality to say that you have to follow the official plan. There's some grey area to that, but my understanding is that that's the case.

The Chair (Mr. David Orazietti): Okay. Mr. Hillier, you want to comment on that?

Mr. Randy Hillier: Yes. There is, except for when it comes to mining or mineral exploration. The Mining Act clearly trumps official plans under the present act.

Going back to the first part of the statement: Yes, there are lots of municipalities that have crown land—in southern Ontario, in the near north, in the far north—that is off limits from official plans. However, what we've clearly seen in this committee from all the representation is that in the far north it's going to be treated differently. All the lands, just about without exception, are crown land in the far north. However, we are saying that mineral exploration will be off limits in the far north unless there is a community-based land use plan that permits it. Okay? That's what is being proposed under Bill 191.

So if that is indeed a legitimate, thoughtful expression of the government, that the communities ought to be determining what mineral exploration goes on in the far north, then the same concept and the same principle must apply to the near north and to the south.

We don't have community-based land use plans in the south. What we have are official plans. So let's put official plans and community-based plans on the same playing field.

The Chair (Mr. David Orazietti): Mr. Brown, do you want to comment?

Mr. Michael A. Brown: Thank you.

Well, that's a gigantic leap. The same thing applies in northern Ontario, southern Ontario, eastern Ontario, the city of Toronto, anywhere else in the province. According to your amendment, which speaks specifically to crown land, everything is exactly the same in all of the province. So if you want to talk about this, it's kind of an interesting conversation, but it has nothing to do with the amendment you're presenting.

Mr. Gilles Bisson: Well, actually it does. The reason I was asking the question was because he talks about crown land in the amendment. Private land is coming up a little bit later. I was trying to understand something. There are two different stages. As I understand it, there's nothing that currently prevents somebody from staking a

claim on crown land in a municipal boundary. But if it comes to moving forward on development, then you need to adhere to the municipal plan, because then you're talking about physical structures that have to be built within a municipality, which might be a mine headframe, a mill or whatever. That would fall under the Municipal Act. It would fall under the official plan.

As I understand it, the way it works right now is that you would be able to stake the claim, let's say within the city of Timmins, on crown land, but the minute that you want to go up and build a garage, a headframe, a mill, then you would have to adhere to the municipal plan. Am I correct?

Mr. Michael A. Brown: No, you are incorrect. You're incorrect because crown land is not subject to municipal plans. Right?

Mr. Gilles Bisson: Chair, with due respect, can I ask for about five minutes so I can run and get those notes that I requested from my office? I know where they are. Maybe that's them coming. No? Let me see if that's it.

I'd just ask for a few minutes, because my understanding is different than yours.

Interjection.

Mr. Gilles Bisson: Can I get a five-minute recess, Chair? I will be very quick. I'll get what I need, and I'll be right back.

The Chair (Mr. David Oraziotti): Five minutes?

Mr. Gilles Bisson: Would you grant me five minutes?

The Chair (Mr. David Oraziotti): Agreed.

The committee recessed from 1615 to 1621.

The Chair (Mr. David Oraziotti): The committee is in session. Mr. Bisson, go ahead.

Mr. Gilles Bisson: Just to the point I was making earlier, this particular question came up a number of times within the committee. Property owners were coming before us, worried about a mine being established in their backyard without any say by the municipality. This is what I got from legislative research:

"I'm responding to the question, 'Are municipalities able to prohibit mining operation within their municipalities,'" etc. "Section 34 of the Planning Act generally provides that municipalities may prohibit the use of land except for such purpose as may be set out in bylaws"—within their own municipal bylaws. "While this gives municipalities the general authority to regulate land use, one aspect of the question which you have raised revolves around whether a mining operation, which is comprised of the extraction of minerals, is a use of land," which is to your point. That's why I'm saying that this thing gets kind of confusing. "In this respect, you will note that subsection 34(2) of the act specifically provides that pits and quarries are land use for the purpose of subsection 34(1), but there is a distinction between pits and quarries" on the one hand "and mining operations" on the other hand. "In addition to whether a mining operation is a use of land to which section 34 applies, a distinction needs to be made between above-ground structures, appurtenant to a mining operation and the mining operation itself, while structures located above ground which

are pertinent to the mining operation would be subject to zoning regulations," which is the point that I make.

In fact, we find ourselves in a bit of an odd situation with the bill because we're saying, and desirably so for some, that you should allow exploration to happen on crown lands within municipalities. We understand why that's done. In communities like mine, mining exploration happens on a daily basis within the boundaries of the city of Timmins. I don't think there are a lot of people in the city of Timmins who would want to see no exploration happen within a municipal boundary without the approval of the municipality, because you may get, for whatever reason, a municipal government that says no, and then all development and all possibility of new mines in places like Timmins or your community or mine would be blocked.

The safeguard is the buildings, and that's what I was speaking about earlier to legislative counsel, that from what was explained to me how the Municipal Act operates, the council has the authority to say yea or nay on the actual physical structures that are to be built above land—not the below-ground ones, but the pits and quarries and anything above-ground. So there's a bit of safeguard.

The question becomes—and that's why I wanted to ask you the question—a whole different ball of wax when it comes to private land because then you get into property rights owner issues. I find myself in a bit of an odd position where I support the idea of a private landowner being able to have some say about what happens on their private land, and on that, I want to support you, but I find myself somewhat conflicted because crown land in municipal boundaries—I wouldn't want to be, and I don't think any of the other members who are affected by this would want to be, in a position of having to say no to any exploration that happens on crown land.

I think the safeguard is, municipalities do have some wiggle room when it comes to what's going to happen in the end when it comes to the physical structure.

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I just would remind members that we knew we were dealing with this amendment, and this amendment says, just so we know, "The holder of a prospector's licence may not prospect for minerals or stake a mining claim...." It doesn't contemplate buildings or anything else. What this says is that a prospector cannot stake a mining claim within a municipality unless it's consistent with the municipal plan. Am I reading that right? But the crown land isn't subject to a municipal plan in the first place, so I don't really understand the amendment. Well, I understand the amendment, but I don't see its usefulness—or its application, anyway.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: You're making a bit of a circular argument. Let's go back to the very essence. All crown lands in the far north under Bill 191 will be subject to

community-based land use plans approval prior to mineral exploration and development. Is that correct?

Mr. Michael A. Brown: Did I hear you right?

Mr. Randy Hillier: Yes. Under Bill 191, the government is proposing that all lands north of 51 will be subject to community land use plans before development activity happens on those lands, right?

Mr. Michael A. Brown: That is a proposal, that there be an agreement with the First Nations that have an interest in their traditional lands that there be a community land use plan. That is not a municipality; that is not a municipal official plan. So the same issue in northern Ontario, in the undertaking area of Bill 191, is the same. If there is a municipal plan there, there would not be subject to—crown land is not subject to a municipal official plan.

Mr. Randy Hillier: But the government is recognizing the value of the people in those communities to be involved and participate in the decision-making of what happens in their communities and in their areas, right? That is clearly evident. The government recognizes value in the communities developing plans for land use.

If that is clear, cut and dried—there's no wiggle room on that one—why is the same principle not contemplated for others below the 51st parallel?

Mr. Michael A. Brown: It is exactly the same below the 51st parallel and above. If there's a municipal official plan, it has no jurisdiction over the crown land within it. You can make an amendment about that; that's a different issue.

Mr. Randy Hillier: I'll be happy to hear the proposal.

Mr. Michael A. Brown: I said that you can, if you wish. I'm just at a loss here.

Mr. Randy Hillier: It should be so obvious—

Mr. Michael A. Brown: It is.

Mr. Randy Hillier: —that the government is recognizing communities to be involved in participating about land use above 51. Let us expand that to all of Ontario.

Mr. Michael A. Brown: The Mining Act does provide opportunities for consultation about particular mines, no matter where you are. I believe the Mining Act provides that when you're bringing a mine into production, there is a necessity—you could maybe help me, Catherine.

Ms. Catherine Wyatt: I think if you're getting at the idea of a closure plan in order to do mine development, then there would be public and aboriginal consultation.

Mr. Michael A. Brown: Yes.

The Chair (Mr. David Oraziotti): Mr. Bisson, any further comments on this amendment or —

Mr. Gilles Bisson: No, no. I'm wondering where my friend was at here.

The Chair (Mr. David Oraziotti): Are members ready to vote on this amendment?

Mr. Randy Hillier: I think you've gone through the—clearly we are creating different classes of communities in this province with these bills, both Bill 173 and Bill 191. Wiggle as much as you like, that's what it comes down to. Whether it's private lands being treated

differently in the south than the north, whether it's community land-use-based plans, we're creating a multitude of conflicts down the road because we are breaking that fundamental principle of protection and equality before the law.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: All I can say is, Mr. Hillier, it is exactly the same in both places.

The Chair (Mr. David Oraziotti): Any new comments to add here to the discussion?

Mr. Gilles Bisson: Yes. Just in fairness to the parliamentary assistant, I think Mr. Hillier and I are arguing about two different issues here, so let's not get too mixed up. On 29(1)—

Mr. Michael A. Brown: I'm arguing the amendment that's before us.

Mr. Gilles Bisson: The reason I raise it is twofold. There is a real sense on the part of property owners that somebody can come in and stake a claim within a municipal boundary that's private land and, more specifically, cottagers are worried about crown lands around their own private lands and cottages. That's a real fear that people have about development. It's true when it comes to any kind of development that happens on those types of land. We heard that very clearly.

On the other hand, although I understand what Mr. Hillier is trying to do, this particular amendment, if taken all the way, would mean that in my community there would be no mining. Am I correct? That's the way I read it. That would not be something that I could support, I just want you to know.

I'm not unfavourable to the argument of the private property owners, but crown land in the place where I come from is huge. In fact, that's where all the mining is taking place, or 60%, 70% of mining in our community. I wanted to raise it.

The Chair (Mr. David Oraziotti): Okay. Any further comments on this? Are members ready to vote on this amendment?

Mr. Randy Hillier: I'll ask for a 20-minute recess, please.

The Chair (Mr. David Oraziotti): Okay, a 20-minute recess has been called for.

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): And a recorded vote when you return.

The committee recessed from 1632 to 1652.

The Chair (Mr. David Oraziotti): The committee is in session. Members, take your seats. We have a recorded vote called for on a new section to be added, 11.2. It's number 9.2 in your package. A recorded vote has been called for. The committee has resumed; the recess is over.

Ayes

Hillier.

Nays

Bisson, Brown, Jeffrey, Kular, Mangat.

The Chair (Mr. David Orazietti): Okay, thank you. The motion is lost.

The next item is 9.3, a Conservative motion, section 12. Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that subsection 29(1) of the Mining Act, as set out in section 12 of the bill, be amended by adding the following clause:

“(c.1) on any land where a municipal official plan prohibits claim staking;”

We'll just go through there again. Subsection 29(1) identifies a number of clauses where—it's called “Restricted Lands”—lands are prevented from being staked or claimed. They include registered lots and subdivisions. I'm not going to read through all of it. However, further to previous amendments, this identifies municipal official plans, as well, as having been on that restricted list where land is identified as part of the municipal official plan.

The Chair (Mr. David Orazietti): Any further comment? Mr. Brown, go ahead.

Mr. Michael A. Brown: I would just point out to the member that in southern Ontario, private surface rights are withdrawn automatically. If a surface rights holder in the south wishes to reopen private lands to staking, the minister would have to take into consideration factors related to municipal planning. So, first of all, the staking rights will be withdrawn in southern Ontario, and if someone wishes to have the land staked in southern Ontario on private land, he or she would have to make an application to the minister, who would consider municipal planning views. So we think this would be totally unnecessary.

Mr. Randy Hillier: I think what ought to be clear is, what these amendments are doing is exposing the contradictions and the hypocrisy of these bills that affect mining: Bill 173 that's in front of us, and Bill 191 that's coming shortly to us. There is a treatment, a recognition, of different classes of communities, different classes of citizens, different classes of property owners, depending on where one is situated. These amendments are showing those contradictions—that, in this one, is recognizing that municipal official plans, as we talked about in the previous amendment with community land use plans—putting them on par with other communities.

Once again, if it's good north of the 51st parallel, if it's appropriate, if it's going to be recognized within law that communities are involved and full participants in making decisions on what happens in their communities, then it should also be recognized below the 51st parallel. You can't have your cake and eat it too. What's good for the goose is also good for the gander. These are contradictions. Legislation ought not to be creating contradictions, ought not to be creating conflicts; it should be reducing and eliminating them.

The Chair (Mr. David Orazietti): Mr. Brown, go ahead.

Mr. Michael A. Brown: Again, there is no contradiction. Official plans are treated the same way in northern Ontario and in southern Ontario.

Mr. Randy Hillier: No, they're not.

Mr. Michael A. Brown: Yes, they are.

Mr. Randy Hillier: No. Just because you say so—it is not true.

Mr. Michael A. Brown: Show me an example.

Mr. Randy Hillier: Bill 191.

Mr. Michael A. Brown: Yes?

Mr. Randy Hillier: Community land use plans—

Mr. Michael A. Brown: It's not a municipal plan.

Mr. Randy Hillier: We call them by a different name.

Mr. Michael A. Brown: No, it's totally different. You know that.

Mr. Randy Hillier: An official plan: Is that not developed by the community?

Mr. Michael A. Brown: A municipal official plan is subject to the Planning Act, which is the Municipal Act of the province of Ontario.

Mr. Randy Hillier: Well, of course, because we have municipal jurisdictions here; we have unorganized districts in the north.

Mr. Michael A. Brown: We have unorganized districts in the south.

Mr. Randy Hillier: We have some different legal terminology, but the concept is the same.

Mr. Michael A. Brown: We're not talking concept; we're talking law.

Mr. Randy Hillier: You're talking about contradictions in law; that's what you're doing.

Mr. Michael A. Brown: No, there's no contradiction in the law.

Mr. Randy Hillier: Absolutely.

The Chair (Mr. David Orazietti): Okay, let's hang on here for a second. Mr. Bisson, do you have something to add?

Mr. Gilles Bisson: I guess the government members—Mr. Hillier says they can't have their cake and eat it too. In fact, they can, because as I read section 29, what he's doing under section 12, as proposed by this amendment, is just making crystal clear what already exists in the bill.

If you look at section 29, it says, “No mining claim shall be staked or recorded except with the consent of the minister,” and it goes on to spell out a whole bunch of different areas where claims cannot be staked within a municipality. It's on any land that is a lot within a registered plan of a subdivision—which means to say it would be that of an official plan, because subdivisions normally are subject to an official plan. The other one was cottages—it just goes on. There's a whole bunch of sections, and I don't want to read them all because it would be fairly long. But it's clear that the act, as written now—because this is language, as I understand it, in the current bill, and you're just bringing forward the new bill. What his amendment would do is just make it clear.

I think it's not a bad amendment. Unless you can give me a reason why this is a bad idea, I think it's something

we should be seriously considering. It just clarifies that you can't stake a claim on private land unless you have permission—that would be the case with the legislation now—and you would have to be consistent with a municipal plan. That's what we have now.

I see the ADM and legislative counsel just smiling.

The Chair (Mr. David Oraziotti): Any further comments on this particular amendment? Are members ready to vote on this or—Mr. Hillier?

Mr. Randy Hillier: I'll just reiterate, again, on page 5 of the bill—

Mr. Gilles Bisson: Pages 4 and 5.

Mr. Randy Hillier: Yes, it starts on the bottom of page 4 and continues on to page 5. Clearly it's identifying, it's putting in criteria: not a residential or cottage lot, land that is railway land, land that is used for an airport, land that is used for public purposes—so on any land where a municipal official plan prohibits claim staking. This makes it clear.

Mr. Michael A. Brown: It already is clear.

The Chair (Mr. David Oraziotti): Mr. Bisson, do you want to add something?

Mr. Gilles Bisson: I think it's incumbent upon us as legislators to make sure that the intent of what the government wants in the bill is made clear and that there's no ambiguity about what it is we intended from this committee. We clearly heard from people—and that's why I spoke to the earlier motion, because I didn't want to restrict crown land for the arguments I made previously. I won't repeat them.

But on private lands, there's quite a different argument. The way it stands now, if you own private land, you probably own the mining rights. Normally the surface land owners have mining rights. A mining explorationist or a mining developer—two different things; one looks for a mine, the other one builds it—can't do anything without your permission. That's the law now. If we look at the law now, it goes on to say that you cannot stake a claim—it's very specific—on any lot within a registered subdivision, which are all subject to an official plan, agreed? And then it spells out cottage lots. For example, where I live, it's considered a cottage lot, but it's in a municipal boundary—you can't stake a claim there, and a whole bunch of other places, as laid out in the legislation.

I just think the amendment put forward by Mr. Hillier is one that would clarify. Unless legislative counsel or the lawyers for the ministry can give an explanation as to why this is not a good idea and why it doesn't clarify, I'd be very interested, because I think it's a reasonable amendment.

The Chair (Mr. David Oraziotti): Is there anything else new to add to the discussion on this, or are members ready to vote on this?

Mr. Randy Hillier: I'll take a 20-minute recess.

The Chair (Mr. David Oraziotti): Okay, a 20-minute recess.

The committee recessed from 1702 to 1723.

The Chair (Mr. David Oraziotti): Okay, folks, we'll resume committee. We have on the floor Conservative motion 9.3. There was no recorded vote called for, so we'll vote on that. All those in favour? Opposed? Okay, the motion is lost.

The Chair (Mr. David Oraziotti): Next motion, 9.4: Conservative motion. Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that subsection 29(2) of the Mining Act, as set out in section 12 of the bill, be struck out.

Let me just read that clause that we're looking to have struck out. "If a claim is staked on lands described in subsection (1)"—that's the restricted lands—"without the minister's consent but such consent is subsequently obtained, the claim as recorded shall be deemed to include those lands."

So what we're saying is, "These lands are off limits. They're restricted. You're not allowed to stake on these lands. However, if you do so, if you don't follow the process, if you actually break the law, the minister can then say, 'That's okay. It's acceptable. Your claim is valid.'" Unless I can hear some commentary from the government side as to why it is acceptable to break the law, to engage in activities on lands that are prevented from being engaged on, the way it sits right now, this clause provides rewards and benefits for those who break the law. Is there some comment, thought or suggestion as to why that should be allowed to remain?

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: I think my friend would recognize that this is not a perfect world, that mistakes sometimes occur and that there needs to be an ability to remedy an error. That is what the intention of this clause is: It's to make sure there is an option. As the member might know, it's not always apparent exactly where boundaries are. This just provides some way for a legitimate claim to go through that inadvertently would have been not processed.

I'm kind of surprised that the member thinks that all mapping is perfect, that all areas are exactly the way they would be and that there could never need to be an opportunity to correct a legitimate mistake.

The Chair (Mr. David Oraziotti): Mr. Hillier.

Mr. Randy Hillier: I understand the world is not perfect, but it's not getting any more perfect when we have laws like this.

Obviously we understand the context, but this applies to restricted lands, lands that are not allowed to be staked in the first place, right? This is those people with private property rights. We're now saying, "If somebody inadvertently makes an error and stakes that private land, well, that's okay. The minister has the discretion to come back later and say, 'Well, yeah, there was an error. There was a mistake—honest or whatever it may have been—but we can grant you that claim now, anyway.'" We cannot be having laws constructed that benefit wrongdoing.

1730

Listen, you mentioned options where somebody makes an error—I don't know what errors—on any land that is part of an airport, on any residential or cottage lot or where there are arenas and libraries. Those are all pretty clear uses. I can't believe that somebody would stake a claim by a library and not understand that there's a library there. To have that sort of latitude, there might as well not be any regulation at all. Why don't we just leave everything to the minister's discretion? There's no sense even having statutes. Some minister up on high will make a decision as to what is acceptable today or not.

The rule of law is there for a purpose. You can't be rewarding somebody for breaking the law, and that's what that clause does. You're on restricted land anyway. This act sets out that you're not allowed to stake on those lands. How can you possibly support a clause that rewards somebody for breaking the law?

The Chair (Mr. David Orazietti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: A question to the parliamentary assistant: Does subsection 29(2) exist in the current act? Is that the case in the current act? I don't believe so, eh?

I think Mr. Hillier makes an interesting argument here. Essentially what this does is it says that if I stake a claim without the consent of the minister on any of those lands described in section 29(1), there's no penalty. Am I correct? There could be no penalty. Can I get legislative counsel—

Mr. Michael A. Brown: I think we will—

Mr. Gilles Bisson: I'm trying to figure out how this would affect the penalties.

Mr. Michael A. Brown: Ms. Wyatt, help us here.

Mr. Gilles Bisson: Let me rephrase it so that I'm clear: It would give the minister the ability to not levy a penalty under the act.

The Chair (Mr. David Orazietti): Ms. Wyatt, go ahead.

Ms. Catherine Wyatt: That's an interesting way of putting it. The point is that the minister is the one who would have consented in the first place had it been done absolutely perfectly. If it's not, then the minister is the one who has been given an option here to consent after the fact. The minister's not required to consent after the fact, so should the minister decide not to, then of course, the claim is invalid.

Mr. Gilles Bisson: So normally when we write legislation, when it comes to a fine—let me ask the first question; maybe I need to ask that first. If this subsection (2) was not there, if we only had section 29(1) and there was no 29(2), and the person actually staked a claim on one of these pieces of property without consent, it would be subject to a fine, I would think?

Ms. Catherine Wyatt: For non-compliance with the act, somebody could be prosecuted. In a sense, the penalty here is that the claim wouldn't have been validly staked, and you don't get the claim.

Mr. Gilles Bisson: Okay, there are two issues. There's the claim—

Ms. Catherine Wyatt: There's the whole issue of whether you prosecute people for making errors or you go by what the act says: If you haven't staked the claim properly, you don't have a valid claim.

Mr. Gilles Bisson: Okay, maybe I'm understanding this wrong. Let me try it again; maybe I'm reading it wrong. I see subsection (2) saying, "If you mucked up as the prospector, and you've staked the claim without consent, the minister can go back and give you consent after the fact." That's the way I understand it.

My question is, why didn't we just deal with that in the penalties part of the bill? Normally under penalties you would have the "minister shall" or the "minister may," right? I take it that, when it comes to penalties, the minister may levy a penalty to a certain amount. Why don't we just deal with it that way, the first part, which is the penalty for not having followed the act?

Ms. Catherine Wyatt: Well, I'm not sure if you're asking what the law says or a policy question.

Mr. Gilles Bisson: No, it's the law, because what this would do is—I guess where I'm coming to is that as I understand it, if I was to contravene section 29(1), the minister would have the right to subject me to a fine, under the act.

What this does is it allows the minister to say, "I'm not going to levy the fine, and I'll allow the claim to stand." I'm just wondering why you did that. It just seems kind of redundant to me.

Ms. Catherine Wyatt: I'm not sure I understand your question. The offence provisions still exist, so any time someone is not in compliance with the act, there's an option to prosecute for an offence.

Mr. Gilles Bisson: That's my point. My point is that you're subject to prosecution if you break the act. In this case we have a section that says if you've broken the act, the minister has the capacity to say, "I'll let the claim stand." I'm just wondering why we did that. It just seems a bit odd.

Mr. Michael A. Brown: Perhaps I can help.

Mr. Gilles Bisson: Okay, thank you.

Mr. Michael A. Brown: In the example of an airport: Obviously, there's an airport there. It's crown land. A prospector stakes the land, not on the airport but adjacent to the airport.

Mr. Randy Hillier: It's only on parts of airports. The lands adjacent to an airport are not restricted.

Mr. Michael A. Brown: For example, the prospector by mistake has put the stake onto airport property in one corner, where we're saying a couple of metres of the claim would be in one corner of the airport. Obviously that wasn't the intent. The prospector meant to be over another couple of metres with one corner of the stake.

Now, is that a violation of law? Was he trying to do something that he shouldn't? Or did he merely make a mistake in that one corner?

This provides—it's kind of like a committee of adjustment, which you would see in a municipality: You can recognize a simple error.

The intent of this is obviously not to change or overturn the act. It's just to take into account that the world is not a perfect place and a stake could be put inadvertently over the line. For somebody who is a prospector, I think they would understand this.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Well, you speak in such a minimalist, hypothetical fashion, but this does not say, "If it's only a metre onto somebody's property." This doesn't say, "If it's only in a little corner of your property." It says that if you break the law, the minister can reward you.

Typically, in our society, if you break the law, we don't leave it up to one individual to determine innocence or guilt. We have due processes. Nowhere else have I seen a piece of legislation that says, "If you break the law, you can be rewarded for it." And it's at the sole discretion of the minister.

It may be that little corner of an airport but it also could be on a residential or cottage lot. It also could be on properties that are on registered plans of subdivisions. It may be on people who have had the mining rights withdrawn out of this act, because they are also restricted.

So you cannot—if you want to put a clause in there that says, "We can encroach a little bit on these restricted lands; these restricted lands are not really that restricted," and the minister will have it in his or her jurisdiction to determine what lands are indeed restricted or not—that is what it's saying.

If somebody does make a minor error, fine; there may not be any necessity to prosecute. But then the claim goes back, not on those properties that were inadvertently or wrongly staked. You can't be making a claim valid under these conditions.

1740

Mr. Michael A. Brown: Well, this is clearly to accommodate some minor difficulties with staking. It is still: All private land in southern Ontario will be withdrawn from staking. That is the way—

Mr. Randy Hillier: Unless there's an error.

Mr. Michael A. Brown: What we're talking about is—no. All private land in southern Ontario is being withdrawn from staking. What is being contemplated here is an ability to make a minor adjustment, because I think in the situation you're talking about, Mr. Hillier, if the prospector wanted to, he would just go restake the claim, or maybe Mr. Bisson would have run out and—

Mr. Gilles Bisson: Staked it again.

Mr. Michael A. Brown: —staked it again, and that would not necessarily be a reasonable solution.

This is just one of those accommodations that I think reasonable people would think need to have happen. It is minor in nature. That is what is contemplated. Sure, you could say, "The minister can do this, that or the other

thing." If you want to suggest a process that would do that, you could go ahead and draft a lot of legislation to do that, but I think it's in the interest of the people of Ontario that the minister be allowed this discretionary power to, not reward someone, but to just do—I hate to say the words—a common sense solution to the resolution of the claim.

Mr. Gilles Bisson: Well, that was a red flag.

Mr. Michael A. Brown: I know. I thought I'd get you going, Gilles.

Mr. Gilles Bisson: You got me going here. Chair?

The Chair (Mr. David Orazietti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: Just for the record, to be clear: Currently, if a claim is not properly staked and the prospector goes and registers that claim and there's an error, it then becomes open again and anybody can go stake it. Currently, the way it works is that you snooze, you lose. That's the nature of the business, and it's happened in some very interesting cases that I'm sure you're aware of and I'm aware of that we can talk weeks about. But the point is, if you improperly stake, there's no remedy. The only way you're going to get it back is hope to heck that nobody else has staked it on you since. So that argument I don't think holds in this case.

The part that I thought was interesting—I had not picked up on this, and it's an interesting amendment that Mr. Hillier brings forward—is that it essentially says that currently, under section 29, you cannot stake a claim on particular pieces of property, and one of those pieces of property is, let's say, a cottage lot. It's fairly clear: You just can't do that. What this basically says is that if a person goes out and makes a mistake and stakes it on the cottage lot, and the minister agrees that it's an interesting claim that should be held by the prospector, then you can go around the law. That's the way I'm reading it, the long and the short of it. I think that's what you're trying to get at. That would be the effect of what this does. I just find it odd that we would put that in legislation.

Mr. Randy Hillier: I think we have to be clear. The intent of the legislation only has meaning by words. The words are clear here. The words are absolutely clear—it doesn't appear in the old act; this is new—that if I make a mistake, I don't go out and restake; I just go and ask the minister. Now, I can be on restricted lands and all I have to do is convince a minister that it's good for me; it's beneficial for me. This would be like saying somebody inadvertently takes my car, they mistake my car for their car, and, "Well, it's okay now. You got it anyway." We have due processes of law, with remedies. This is ridiculous that this is in here.

Mr. Gilles Bisson: Just a question.

The Chair (Mr. David Orazietti): Go ahead, Mr. Bisson.

Mr. Gilles Bisson: To our esteemed colleague, our esteemed, learned lawyer: As I understand it, currently, and correct me if I'm wrong, without permission, you can't stake on a cottage lot. Correct? Currently, with the legislation as written, 29 would say that I'm not allowed

to stake on a cottage lot unless I have permission of the minister. Right?

Ms. Catherine Wyatt: No.

Mr. Gilles Bisson: Okay. Well, then—

Ms. Catherine Wyatt: Not exactly. We did amend 29 and 30 of the existing act so, in fact, it's not a stakeable-with-consent option, and cottage lots aren't specifically referred to.

Interjection.

Mr. Gilles Bisson: Where the resident or cottage lot is one hectare large, or smaller.

Ms. Catherine Wyatt: Yes. That's in the bill. Are you talking about the bill or the act?

Mr. Gilles Bisson: I'm talking about the bill.

Ms. Catherine Wyatt: Okay, sorry. The bill currently—yes?

Mr. Gilles Bisson: My point is, you don't have the right to do that without the consent of the minister. This would allow you to make an error or maliciously stake and, if you're lucky, you can get the minister on side; you can fix the problem. That's what this subsection 29(2) would do?

Ms. Catherine Wyatt: I don't know if that's exactly a legal question. What I can tell you is what it says, which is that you can, with the consent of the minister—yes, that claim could be recorded.

Mr. Gilles Bisson: That's right. And that's the point I think Mr. Hillier was making. I think it's a reasonable point that he makes. Now, I understand why you may want to fix that. As you say, you need a mechanism for minor variances, and that makes perfect sense, but we should have said that in the bill. The problem, as I see it, is that Mr. Hillier I think is—you're both right. We need to allow minor variances, no argument, but in the case of Mr. Hillier, he is saying that a person could maliciously go out and stake, and if you happen to get the minister on side—and I hope the ministers would never do that in your government, mine or yours, but it could happen. A very interesting point, Mr. Hillier.

The Chair (Mr. David Oraziotti): Any further debate?

Mr. Randy Hillier: I'll have to just flesh this out a little bit. Nowhere in here does it say if it's a minor

variance. We're not giving any meaning, we're not giving any instruction, we're not giving any direction to those who come after us who will be reading this legislation and enforcing it. Clearly, whoever reads this legislation and is expected to enforce it down the road will say, "If I'm the minister, I have the authority to allow that claim to proceed."

We've not given any other direction. So the intent is clear. The minister has discretion, without any minor variances or whatever.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Randy Hillier: I'd like to hear: Is that acceptable, in the government's view, that the minister has full discretion over validating and rewarding those who break the law?

Mr. Michael A. Brown: I explained why this provision is necessary, and we stand by that, Mr. Hillier.

The Chair (Mr. David Oraziotti): Further comment? Seeing no further comment from the—

Mr. Gilles Bisson: I don't agree, but they made an argument.

Mr. Randy Hillier: I'll ask for a recorded vote and a 20-minute recess, please.

The Chair (Mr. David Oraziotti): That's fine, and we will do that. I just want to clarify one thing. As the committee is supposed to move to Bill 191, just as long as we have an understanding, at the committee's discretion or decision-making, on Monday, from 2 to 6, we will continue with Bill 173, and on Wednesday, from 4 to 6, should we need that time, we will also continue with this bill. The notice has to be put out for two days. Are we in agreement on that—Bill 173 next week?

Mr. Gilles Bisson: I just want to be clear: If we're not in on Monday, we're back here Wednesday.

The Chair (Mr. David Oraziotti): Correct.

Mr. Gilles Bisson: Yes.

The Chair (Mr. David Oraziotti): Okay. A 20-minute recess has been called for. Since there is no more time remaining today, this committee is adjourned.

The committee adjourned at 1746.

CONTENTS

Wednesday 23 September 2009

**Mining Amendment Act, 2009, Bill 173, Mr. Gravelle / Loi de 2009 modifiant la Loi
sur les mines, projet de loi 173, M. Gravelle..... G-1043**

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Laurel C. Broten (Etobicoke–Lakeshore L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L)

Mr. Mike Colle (Eglinton–Lawrence L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Also taking part / Autres participants et participantes

Ms. Catherine Oh, legislative counsel

Ms. Catherine Wyatt, legal counsel,

Ministry of Northern Development, Mines and Forestry

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Catherine Oh, legislative counsel

27/03
G-40
G-23

G-40



G-40



ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Monday 28 September 2009

Journal des débats (Hansard)

Lundi 28 septembre 2009

**Standing Committee on
General Government**

Mining Amendment Act, 2009

**Comité permanent des
affaires gouvernementales**

Loi de 2009 modifiant
la Loi sur les mines

Chair: David Orazietti
Clerk: Trevor Day

Président : David Orazietti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 28 September 2009

Lundi 28 septembre 2009

The committee met at 1405 in room 151.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Orazietti): Good afternoon, everyone. I call the committee to order. We left off at Conservative motion 9.4. We had a recess that took us past time and a recorded vote was called for. So, we'll begin with that.

Ayes

Bisson, Hillier.

Nays

Brown, Jaczek, Kular, Mangat.

The Chair (Mr. David Orazietti): The motion is lost. There were a number of additional motions that were added today. You have those in your package. Government motion 9.4.1. Mr. Brown.

Mr. Michael A. Brown: I move that subsection 29(2) of the Mining Act, as set out in section 12 of the bill, be struck out and the following substituted:

"Where claim staked without consent

"(2) If a staked claim includes a small area of land described in subsection (1) and the consent of the minister was not obtained prior to the staking in respect of the area, the minister, if he or she is satisfied that the failure to obtain prior consent was inadvertent, may subsequently provide his or her consent and the claim as recorded shall be deemed to include those lands."

The Chair (Mr. David Orazietti): Thank you. Any further comments you'd like to add to that, Mr. Brown?

Mr. Michael A. Brown: This is to clarify what I was suggesting the last time we so productively met: that this was just a way of correcting an inadvertent mistake. I think this clarifies that, and I thank my friends across the floor for providing some initiative for us to include this.

The Chair (Mr. David Orazietti): Mr. Bisson?

Mr. Gilles Bisson: Just for the record, I'm glad that the government brought forward this motion because in fact it will clarify what the intent of that particular section is for. It's to deal with inadvertent activity on the part of a prospector, and it wouldn't allow a backdoor to be able to bring a claim into the registry. So I will be supporting this amendment.

The Chair (Mr. David Orazietti): Any further comment?

Mr. Randy Hillier: I'll have to say, usually I feel all this discussion and debate that goes on here is of little value. I'm glad to see that all that lengthy discussion on Conservative motion 9.4 has finally borne some fruit with the government deciding to introduce a similar motion. Of course, it's not as clear-cut as Conservative motion 9.4, but it is certainly far better than what was there before, and I will be supporting it.

The Chair (Mr. David Orazietti): Seeing no further comment, all those in favour? Carried.

We'll move to our next motion, Conservative motion 9.5. Mr. Hillier.

Mr. Randy Hillier: I move that subsection 29(3) of the Mining Act, as set out in section 12 of the bill, be struck out and the following substituted:

"Land transferred or vested

"(3) Despite any other provision of any act or regulation, no mining claim shall be staked or recorded upon any land transferred to or vested in any public or private party without the written consent of that party."

And I'll just speak to that.

The Chair (Mr. David Orazietti): Go ahead.

Mr. Randy Hillier: If you look at subsection 29(3), the heading is "Land not open for prospecting without consent of commission." It says, "No mining claim shall be staked or recorded upon any land transferred to or vested in the Ontario Northland Transportation Commission without the consent of the commission."

The Conservative motion that we're proposing grants that same legal protection that is afforded to the Ontario Northland Transportation Commission to all others. Right now, under this bill, Bill 173, Ontario Northland has a special privileged status and position under the act. Nobody can explore or stake on their property without their consent. It's what we would expect. But that concept and that principle ought not to be applicable only to Ontario Northland. Of course, it should be applicable to every owner of property. Here, we're setting up a

condition that we struck down in common law over 800 years ago. Neither prince nor pauper is above or beneath the law. Here we're saying, yes, Ontario Northland has got and will have a special privilege that will be enjoyed by no others except themselves. This motion 9.5 extends it so that the same concept and principles of law are applicable to all owners of property.

The Chair (Mr. David Oraziotti): Thank you. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I wouldn't mind, either from the parliamentary assistant or counsel from the ministry, understanding why even that subsection (3) is needed, because under 29(1)(e) it talks about no railway lands. It says "on any land that is railway land," you can't stake a claim. So why are we naming the commission specifically when there's already a general statement that you can't stake a claim on lands that are used for a railway? I'm just curious.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: This amendment just repeats what is in the present act. What we're trying to do here is to ensure that the Ontario Northland Transportation Commission is treated—Mr. Hillier is right; it's treated differently than any other landowner. I'll make a couple of points, though, first. One—

The Chair (Mr. David Oraziotti): Mr. Brown, can you just lower the microphone, please, so we can pick you up better? Thanks.

Mr. Michael A. Brown: Sure. One of those, of course, is that in southern Ontario, the right to stake has been taken back, has been withdrawn, so there is no conflict between the private landowner's surface rights and the mining rights that may go with the property, because the rights have been withdrawn unless that landowner specifically asks the minister to do something about that. In northern Ontario, it's the reverse situation, where a landowner or owner of the surface rights may ask the minister to withdraw the mining rights.

So we are just treating the ONTC, which has been around for about 100 years—I'm not exactly sure—in a way that seems to make sense for a crown corporation.

The Chair (Mr. David Oraziotti): Mr. Bisson?

Mr. Gilles Bisson: I don't argue the point. I think there's good reason why you want to make sure nobody stakes a claim on a railway bed. I don't have a problem with that. But it doesn't answer my question. It's a bit of a moot point, but isn't the Ontario Northland already protected under clause 29(1)(e)? I just want to understand. Maybe counsel can answer.

As counsel makes her way up, I'd just remind committee that section 29(1) says, "No mining claim shall be staked or recorded except with the consent of the minister." It goes on to spell out which ones are the ones that you can't stake; (e) says, "on any land that is railway land," and it goes on to talk about switching grounds and rights of way and all that kind of stuff. Ontario Northland is a railway company, so would they not be covered by (e)?

Ms. Catherine Wyatt: It's Catherine Wyatt.

The Chair (Mr. David Oraziotti): Thank you.

Interjection.

Mr. Gilles Bisson: You have a different issue; I realize that.

The Chair (Mr. David Oraziotti): Let's try to just get through one question at a time. Go ahead.

Mr. Gilles Bisson: Thank you, Chair.

Ms. Catherine Wyatt: The lands would be presumably railway lands.

Interruption.

Mr. Gilles Bisson: That is making a lot of noise, whatever that is. There's something making a huge noise; I can't hear. Try again, please.

Ms. Catherine Wyatt: Yes, the ONTC lands, they're with railway lands. It's not reflecting any kind of change. This is the way it was set up in the act to begin with, and we just carried that over, frankly, from the way it was in the existing act.

Mr. Gilles Bisson: So that (3) was in the original act and you're just leaving it there?

Ms. Catherine Wyatt: If you look at the original act—

Mr. Gilles Bisson: I don't have it, unfortunately.

Ms. Catherine Wyatt: Okay. In 29, it had that no mining claim could be staked out or recorded upon any land vested in the Ontario Northland Transportation Commission without the consent of the commissioner. So we just really carried it over.

Mr. Gilles Bisson: Moved it over. But they would be covered under (e), though, right? I really don't care, but I just want to understand. They would be covered.

Ms. Catherine Wyatt: Yes, I would think so. It just changes who gives the consent—

Mr. Gilles Bisson: Okay. I'm not going to make a big deal about it. It just seems to me it's more language in a bill than you need. Sometimes the best bills are the ones with the least amount of words.

Mr. Randy Hillier: To Mr. Bisson's comments, in the first part of the bill, it talks about where there are railway lands. Now, Ontario Northland owns more land than just railway lands, so they are protected from their rail beds being staked in the first part, but this broadens out their legal protection on all lands owned by Ontario Northland, not just those rail beds that he referred to.

It's also a requirement, from the way I see it, because in all that first part of restricted lands, somebody can indeed stake those lands inadvertently and still get permission. That's the motion that we just passed, 9.4.1. So if somebody stakes land on Ontario Northland property inadvertently, they can still apply to the minister to have that claim validated. However, this next section says, "No mining claim shall be staked or recorded upon any land transferred to or vested in the Ontario Northland...." So I'm not sure which is which. Maybe the PA or someone from the ministry could explain, now that 9.4.1 has been adopted, if somebody stakes a claim inadvertently, who has the authority to make that claim valid or not: Ontario Northland or the minister? I'm confused. I'm sure many others are also confused about that.

Mr. Michael A. Brown: I'm going to ask for a little help. I would suggest, though, that in any event, there may be a way to—when we're talking about an inadvertent staking, we're not talking about the entire area that's staked being recorded. What we're talking about is an inadvertent part of that; at least that's my understanding. In the example I gave the other day, when we were talking about an airport, I believe, where the stake happened to be a couple of metres more than it should have been and it was just a mistake, then the minister could recognize the claim. But the claim wouldn't be the airport; it would have been the area outside of the airport. It maybe would include the—well, I'd better get some legal help on this, but the intent is just to fix an inadvertent mistake. In the case of ONTC, you've got me. I'm not exactly sure, so I'd better defer to legal counsel here.

Mr. Randy Hillier: Well, let me just—that's right. Under the existing act, if somebody stakes a claim on property that is restricted, that claim is invalidated and they have to go out and restake their claim and get it validated on property that is open for mining. Under Bill 173, and now with the way amendment 9.4.1 is, the person may inadvertently make a claim on restricted lands, and the claim on those restricted lands can be adopted and approved by the minister—and now we add another wrinkle to it—unless it's on Ontario Northland's property. Then we're just bedevilled, I guess. I'd like to have some clarification.

Ms. Catherine Wyatt: Could you just say which question—

Mr. Randy Hillier: Who has the authority to determine if that claim is valid or not: the minister or Ontario Northland?

Ms. Catherine Wyatt: It's actually an interesting question you raise when we look at this. What—

Mr. Randy Hillier: Again, the legislation is supposed to provide clarity to those who are engaged in the activity.

1420

Ms. Catherine Wyatt: Subsection 29(2), which we were just talking about, refers back to subsection (1). That would allow the minister to give consent to small portions of land inadvertently staked that are listed in 29(1), and yes, that does include railway lands. When we get to 29(3), dealing with the ONTC, that gives the ONTC the right to—

The Chair (Mr. David Oraziotti): Ms. Wyatt, a little bit louder if you could. Thank you.

Ms. Catherine Wyatt: That gives the ONTC the right to consent. So there's an interesting question there as to whether the ONTC could consent, the minister could consent or neither of them could consent. There's no specific allowance for the ONTC to do it. There is a specific provision for the minister to do it with respect to railway lands generally. So it's unclear, just off the top of my head, which one of those would prevail.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: I would suggest, though, that a minister of the crown that the ONTC, at least at the moment, is responsible to under the legislation—this could be worked out. I don't think this is one of the great issues of our time.

The Chair (Mr. David Oraziotti): Mr. Bisson?

Mr. Gilles Bisson: I think Mr. Hillier raises basically the same point I was raising in the amendment we just did. I really believe that the government didn't do this by purpose; it's just one of the things that happens when you draft legislation. You never really get it right. That's what committee hearings are all about, and that's why we're at clause-by-clause.

I think the issue is, and I agree with Mr. Hillier, that if we're trying to provide clarity, that particular section may never be used—I'll agree with the parliamentary assistant—but it might. And if there's ambiguity—that's the way it struck me, and that's why I was asking earlier, "Well, isn't it covered under the previous section?" It struck me as a bit of a back door to who, at the end of the day, actually has authority.

I would suggest that we take a few seconds just to draft a very quick little amendment to make sure that, at the end of the day, it's the minister who has the authority to do the work that needs to be done. I don't think it would be all that hard to fix, and you still get what you want.

Mr. Michael A. Brown: May I suggest we stand down this particular amendment while we do that, and move on?

Mr. Gilles Bisson: That's a good idea.

Mr. Randy Hillier: Again, I just want to add, before we stand that down—that is just one interesting element that we've proposed here—that this is what happens when we create legislation that creates benefits and privileges to certain classes or groups or individuals. We are always going to run into these problems if one property owner is granted special privileges that others are not.

My amendment puts that same value as has been granted to Ontario Northland, that same recognition and stature, within law to all owners. I think we should all be able to agree that, whether I own property or the parliamentary assistant owns property, we have the same rights to our property, and that a business owned by us collectively—and Ontario Northland is owned collectively by the people of this province—ought not to enjoy added benefits that we as individuals cannot enjoy. That's really the crux of this, and this is where we run into difficulties in legislation, when we treat a collective ownership in a higher regard than the individuals who own that collective group.

I still believe that what needs to be done is not to grant Ontario Northland any greater or lesser position in law than you and I as individuals.

The Chair (Mr. David Oraziotti): The question was, are we going to put this motion aside until we deal with—are we going to read the other motions or come back to this one? We can't deal with this whole section.

We can go to number 10 and then come back to this section once we've dealt with all the amendments in this section and move on. Are we in agreement on that—

Mr. Randy Hillier: No, I'm not in agreement. You've asked to stand down on this one part about how to grant the minister authority over Ontario Northland. That's not the intent of this motion. The intent of this motion is indeed to treat people with equal protection of the law.

The Chair (Mr. David Orazietti): What I'm hearing from you, although the suggestion was made and it would seem to be seconded over there, is that you're concerned that this be voted on now or discussed now—

Mr. Randy Hillier: Well, I don't want to lose the discussion of the intent of the motion by standing it off. If I have some level of comfort that the government, when we stand down, will look at changing Bill 173 in this respect, with more than just giving ministerial approval—

The Chair (Mr. David Orazietti): Mr. Bisson, do you want to comment on this?

Mr. Gilles Bisson: Just to be helpful, what I think we've got now is an agreement on the part of the government to take a look at part of the issue that you raised. We can still talk about the larger issue when we get back. We just move on to the next amendment, and once we've dealt with that, we can come back and continue the discussion. I think it's a reasonable offer on the part of the government. You won't lose your ability to debate your particular issue.

The Chair (Mr. David Orazietti): Are you in agreement, then?

Mr. Randy Hillier: Yes.

The Chair (Mr. David Orazietti): Let me just clarify for everyone: Are we going to deal with the next amendment in this section and go on to the section following, or are we going to come back to this as the last amendment in this section?

Mr. Gilles Bisson: My suggestion, if the ministry is not ready to get back to us at the end of this next amendment, would be that we not vote on that particular section; we move on to the next and come back later.

The Chair (Mr. David Orazietti): Right. We're in agreement? Okay. Let's set this aside.

NDP motion 10. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I move that the following section be added after section 30 of the Mining Act, as set out in section 12 of the bill:

"Aboriginal community request

"30.1(1) An aboriginal community may withdraw from prospecting and exploration any area in which it has an interest by writing to the minister in the prescribed form.

"Claims staked prior to withdrawal

"(2) A claim staked in an area withdrawn under subsection (1) remains valid if it was staked before the withdrawal was made.

"Consent from aboriginal community

"(3) Once a mining claim has been staked, no exploration or mining activity may take place on the claim

without prior consent from the aboriginal communities that are affected."

I think it speaks for itself. I'm hoping that we have some support here. First Nations who came—let's just back up. What the government is trying to do, supposedly, from what they have said in the intent of this legislation, is to provide a framework by which everybody knows what the rules are. I'm not going to argue that the current Mining Act doesn't work because I've always argued that it does, but clearly we need to be able to strengthen the rules so there's clarity as to what the rules are if I'm going to go do some prospecting and eventually do some exploration and bring a mine into production.

Currently there are, very unfortunately, situations in different parts of the province where First Nations have decided they don't want to have development in that particular area because of aboriginal interest, burial grounds, whatever it might be, and/or they're just not ready, and what ends up happening is a confrontation such as we saw this summer in KI and previously in other places.

Ninety-nine per cent of First Nations want development. I think everybody knows that and has heard that from First Nations. What this amendment does is it just says that it's up to the First Nation to make that decision. If they say that there's an area that is sensitive, it's a burial ground, whatever it might be, they're able to identify it and notify the minister that it needs to be withdrawn. It's a way of making sure that First Nations get the comfort that they need, which allows the clarity to happen to deal with their concerns.

The Chair (Mr. David Orazietti): Thank you. Mr. Brown, go ahead.

1430

Mr. Michael A. Brown: I would just suggest the bill already has a provision to allow for the withdrawal of lands with aboriginal cultural significance, and we anticipate that the communities will identify those lands. The bill also includes provisions for consulting aboriginal communities regarding exploration plans and permits on claims to ensure their concerns are considered prior to undertaking exploration activities. The approach is consistent with the direction being provided by the Supreme Court of Canada.

Mr. Gilles Bisson: I take it you're referring to section 30?

Mr. Michael A. Brown: I'll have to look for the section, but probably.

Mr. Gilles Bisson: Section 30 deals with what's identified in the land use plan, which would be part of that—and also on a reserve, which is a whole different issue. This, I think, goes a bit beyond that, because who knows what the land use plan may or may not be? Maybe there won't be any at all, depending on what happens in the legislation that precedes this one after we're done in committee here. So what was clear in the presentations that we had from NAN and Treaty 3, Robertson Superior and others who came before us to present was that that

was one of their concerns. They wanted to make sure that this be made very clear and not in any way have any shadow of a doubt. So I'm just looking for an explanation from the ministry. I take it you're talking about section 30, partly. Right? Because you referred to it has dealt with other sections of the bill—and possibly section 30(14) as well.

Just for members of the committee who are new, trying to make amendments to any legislation at best can sometimes get kind of technical, and it's my belief that you need to take the time to look at this stuff properly so that we don't end up with any errors in the drafting of the bill that will cause us trouble down the road.

I'm trying to buy some time for the parliamentary assistant to—I'm ragging the puck here so that you can find the section that you're looking for.

The Chair (Mr. David Orazietti): You're being most helpful, Mr. Bisson.

Mr. Gilles Bisson: I am. I'm always a helpful guy.

Mr. Michael A. Brown: You're always very helpful. Thank you, Mr. Bisson.

I would draw your attention to page 6 of the bill, section 14:

“Withdrawal of lands

“(1) The minister may, by order signed by him or her, withdraw from prospecting, staking, sale and lease any lands, mining rights or surface rights that are the property of the crown, and the lands, mining rights or surface rights shall remain withdrawn until reopened by the minister.

“Factors to consider

“(2) In making an order under subsection (1), the minister may consider any factors that he or she considers appropriate, including,

“(a) whether the lands, mining rights or surface rights are required for developing or operating public highways, renewable energy projects or power transmission lines or for another use that would benefit the public, whether the order would be consistent with any prescribed land use designation that may be made with respect to the far north and whether the lands meet the prescribed criteria as a site of aboriginal cultural significance; and

“(b) any other factors that may be prescribed.”

Mr. Gilles Bisson: I read that, and I agree that the minister can do that. The issue here is our amendment that says the First Nation would have the right. I'm reversing it. I'm saying that once the minister has been notified, my amendment that I'm putting forward would give the ability for the First Nation to say, “We identify this particular part of land as not being able to be staked,” and upon receipt by the minister, then it would be withdrawn. It's not a “the minister may” and the First Nation is left knocking at the door, because it may or may not be in a land use plan. We may not have land use plans for many years to come. So it's a way of dealing with some of the issues that we have today—although I understand what you're saying. You are giving the minister the ability to withdraw lands that are culturally significant to First Nations or others. I understand that.

This just makes the decision of what's to be withdrawn with the First Nation, not necessarily just the minister.

Again, I say 99% of communities want mining. It's no different than Timmins or Sudbury or Red Lake. Those communities want mining because they understand it means jobs and it means prosperity to their communities—same thing for First Nations. But I think what First Nations want is that there's some respect. Nobody is going to do exploration underneath a cemetery in Timmins; they just wouldn't do it. First of all, they wouldn't have the authority under the Municipal Act. This would give First Nations an ability to have more authority about what can happen on their traditional territories.

Mr. Michael A. Brown: I would just remind my friend that the staking of a claim on these lands does not allow for any activity until there's a consultation held with the First Nations community. So the staking is quite separate from any activity occurring on the land other than the actual staking. There can be no exploration; there can be no development. As you know, you have to do those things or you cannot keep the claim valid.

You and I both know, because we're from that part of the world that knows something about prospecting, that the last thing you want to be doing is telling the world that you think there's gold in them thar hills, as they say.

Mr. Gilles Bisson: Or them thar swamps.

Mr. Michael A. Brown: Or them thar swamps, right. By its very nature, it's quite a secretive undertaking where you don't want to tell the world about what you intend to be doing.

I think the First Nations' ability to control what development may be there, possibly—because staking doesn't mean anything is actually going to happen—is in those stages after the staking has occurred. So I think it's in the interest of First Nations communities, although I don't presume to speak for them, to see as much prospecting activity happening, and this would do that. After that, if they do have concerns, then the rest of the stages of bringing the claim to lease are there, if you follow me. I think that is the intent of the legislation.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: I'd like just a little clarification from Mr. Bisson. In the reading of the bill right now, the First Nations communities are offered that protection under subsection 30(g), where it says lands that are “located in the far north, if a community based land use plan has designated the lands for a use inconsistent with mineral exploration and development.” Mr. Bisson, are you suggesting that that not be applied strictly to the far north, but to all First Nations communities throughout the province?

Mr. Gilles Bisson: Yes, it would be for First Nations across the province.

Mr. Randy Hillier: Across the province. Right now, like I said, under the act, the First Nations in the far north have that level of protection, so extend it.

Mr. Gilles Bisson: That's the other issue, exactly.

Mr. Randy Hillier: Now, what about in places where—because you’ve got in subsection 3 that once a mining claim has been staked, no other exploration or mining activity may take place on the claim without prior consent from the aboriginal communities that are affected. Where lands are not well identified—I’ll just talk about my area, for example, in Frontenac and North Lanark, where there isn’t a land claim happening right at the moment but there’s a sovereignty claim that affects land. How would that affect—

Mr. Gilles Bisson: See, first of all—I guess you could call it kind of the De Beers clause. De Beers decided early on it wasn’t going to do anything unless it had consent from the First Nations community. That move on the part of De Beers allowed them to get the agreement that they needed in order to get that diamond mine up and running. If they had not done that, there would have been protest after protest after blockade. We would still be blockading the winter road to the Attawapiskat community. I really believe that, because the problem is that if you don’t give some clarity as to what the rules are and what’s going to happen at the end, all kinds of conspiracy theorists come out of the woodwork saying there’s not going to be any development.

So what I’m trying to get at in this—and you were right to point out that the way the legislation is written now, if you were to pass the Far North Act and if the First Nations community actually had a control on planning, northern communities in the far north would actually have a say about what happens, but it doesn’t do anything for First Nations communities outside of the far north. So part of what I’m trying to get at here is to say that if you give First Nations a say about whether, first of all, exploration is supposed to take place in their community, it then creates an onus for people to come to an agreement about what that exploration should look like, and, should you find a mine, what are the benefits for the local community. So for a community in your riding or a community in my riding—it might be Attawapiskat or any First Nation in your community—this would basically make clear that the mining proponent has to make a deal with that community.

They don’t have the protection of the Municipal Act, as the cities of Sudbury, Timmins and others have. People living in municipalities have far better protection as far as if they’re going to get benefits because of the Municipal Act and a whole bunch of other things. This would just put First Nations on a more equal footing. Currently there’s absolutely nothing. We’ve seen where companies have gone in, they’ve staked and they’ve tried to do things without the consent of the community, and everybody’s been up in arms. What we’re trying to do is provide some clarity.

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: I understand and I agree with the intent here, but we also heard from so many communities that came before the committee where there were not First Nations or aboriginal communities who had well-

defined areas. We saw different communities having overlapping jurisdictions or overlapping claims of usage on properties. I’m just wondering if this is going to improve it or make it worse.

Mr. Gilles Bisson: Well, on that particular point it will make it the same. This doesn’t deal with overlapping claims to somebody’s territory. There may be two native communities that are both claiming, “This territory is mine.” “No, it’s mine.” It ain’t gonna deal with that. All this does is make clear that once a First Nation has decided that it doesn’t want mining in a particular part of their territory, it can be removed. Then the mining company knows; it doesn’t have to play around. You wouldn’t have the KIs of this world going on in what we’ve seen, or the Ardochs up in your area. It would make clear where you’re able to stake, and then, if you’ve got the ability to stake, you go out and stake and you do exploration according to the legislation. It’s a much clearer way of doing business.

As it is now, it’s pretty confusing. I’m dealing with some up in the riding just south of me, in Mr. David Ramsay’s riding, where there is some exploration up in the Wahgoshig area. This is an issue. We need to clarify the rules so that at the end, we know what the heck the rules are: Here’s where you can go, here’s where you can’t go, and where you can go, you know what the rules are and you go forward. Where you can’t, you stay away.

The Chair (Mr. David Oraziotti): Any further comment? Mr. Hillier?

Mr. Randy Hillier: I see value, and again, we have a treaty having that same principle applying not just to the far north, but to others. Again, there’s that basic principle of equality before the law and equal protection of the law.

The Chair (Mr. David Oraziotti): Are members prepared to vote on the amendment?

Mr. Randy Hillier: I’ll ask for a recorded vote, if there’s no more discussion.

The Chair (Mr. David Oraziotti): Okay, a recorded vote is called for.

Mr. Randy Hillier: And I’ll ask for a 20-minute recess.

The Chair (Mr. David Oraziotti): A 20-minute recess has been called for. The committee is in recess.

The committee recessed from 1445 to 1505.

The Chair (Mr. David Oraziotti): Okay. Members of the committee, we have in front of us NDP motion number 10. There was a recorded vote called for on this motion.

Ayes

Bisson, Hillier.

Nays

Brown, Jaczek, Kular, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost.

That concludes the amendments in section 12, with the exception of 9.4.1, which we have agreed to set aside for the time being.

We'll move to NDP motion number 11. Mr. Bisson.

Mr. Gilles Bisson: I move that section 35 of the Mining Act, as set out in subsection—

The Chair (Mr. David Oraziotti): Hang on a second. Sorry, Mr. Bisson, my mistake here.

Section 13: There are no amendments. I have to ask for a vote on section 13. All those in favour of section 13? Opposed? Section 13 is carried.

Section 14: NDP motion number 11. Go ahead, Mr. Bisson.

Mr. Gilles Bisson: Okay, 13 was repealed. I get what you're getting at.

I move that section 35 of the Mining Act, as set out in subsection 14(1) of the bill, be amended by adding the following subsection:

"Rock collecting

(1.1) Lands withdrawn under the act remain open, despite the withdrawal, to persons who collect rocks as a hobby."

This refers to an interesting presentation—I believe it was in Chapleau; I forget what community it was—

Mr. Michael A. Brown: It was Thunder Bay.

Mr. Gilles Bisson: Was it Thunder Bay?—where a particular individual who's the president, I believe, of the rock collectors' association of Ontario worried that the Mining Act, as written, would preclude rock collectors from being able to collect rocks in places that are specified in this act as being off-limits for exploration; for example, any crown land which has been withdrawn in southern Ontario, mining lands that might be withdrawn as spelled out in the bill. All this does is it clarifies it. In fact, rockhounds, as they're called, would have the ability to go out and collect rocks for the purpose of rock collections.

The Chair (Mr. David Oraziotti): Any further comment on this motion?

Mr. Michael A. Brown: Yes, it was a very interesting conversation we had. I believe it was one of the few that was an audio presentation, if I remember, and it was a very important addition to what we were talking about. But Bill 173 is not intended, in any way, to inhibit the activities of rockhounds. The ministry has already a very extensive policy on dealing with rockhounds, and we'll be continuing to work away at it. The definition of rockhound, I guess, would be the problem: What's a rockhound and what's a prospector? We're content to leave it at the policy stage, but want to assure those people that are pursuing the hobby that there's no intention within the Mining Act revisions here to do anything that will cause them to do anything differently in the way they proceed.

The Chair (Mr. David Oraziotti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Well, the proper name for the rockhound association of Canada was the Central Canadian Federation of Mineralogical Societies, and it was a

fellow by the name of Robert Beckett. We didn't hear him very clearly because it was an audio, but in his presentation he was significantly concerned that those activities that he and his membership engage in would be prevented down the road under Bill 173. What he said was, "Subsection 18(1), if left as stated in the current amendment, would contradict the Ontario mineral collecting policy and place unreasonable restrictions on most of the general public and severely restrict anyone from pursuing hobby mineral collecting or studying practical geology and mineralogy in the field. It would also have a significantly negative impact on mineral natural-resource-based tourism in many areas of the province, such as those in the Bancroft and Haliburton areas, that rely on the millions of dollars in mineral tourism brought to the areas each year." I've been to Haliburton and Bancroft, and rockhounding is big business up there.

1510

I'm a little bit surprised. It's a very reasonable approach that Mr. Beckett took in just identifying and making a definition for that hobby collection of rocks. If we go to 18(1), I'm just very surprised that the government hasn't brought in their own amendment to clearly identify that. I know we're talking here, and I'm in full agreement, that it's not the crown's intention to limit rockhound activities, but it should be identified in there and there should be clarity—because you and I are not going to be sitting in an MNDM office issuing exploration permits down the road. We're not going to be the adjudicators of decisions, and our intentions here today with regard to rock collecting aren't identified anywhere in the bill.

Mr. Michael A. Brown: We were pretty much on the same page here. It's about definition. But I will be clear. First, we're talking about a very small amount of private land to which staking rights are being withdrawn, so that's less than 1.4% of the land in southern Ontario. So that's what we're talking about. We would not agree that all of that is suitable for rockhounding. There will be cultural sites, there will be archaeological sites, there will be religious sites on that private land, so a carte blanche kind of "We would permit" is kind of problematic.

On the other hand, we think this is a valuable hobby that should be pursued and should be continued. We think, at least at this point, that we could overdefine this and cause, unintentionally, more problems than we're going to solve here, Mr. Hillier. We have no intention of making rock collecting as a hobby something that we are out to prosecute. This is not the intention of the government, and we do have policies surrounding it. So it works on the rest of the 98.6% of the land that already is private land.

Mr. Randy Hillier: I don't think this has anything to do with private or crown land. This group has identified that the way the legislation is written up in 18(1), 19(1) and a few other places, their hobby will be restricted on all lands, and I think that they already recognize they just can't go on private property and collect rocks, that they

would be subject to the trespass act. This is on all other lands, so crown lands. They want to have a level of comfort that they can continue in their hobby. As I said earlier, I'm sure the government is not interested in prosecuting rockhounds for undertaking their activity; however, like I said, you and I and the people in this committee will not be out enforcing this legislation. We're crafting the legislation to give guidance to those who do enforce it so that they understand what it is that we expect them to do. The act does not identify or define what a rock collector is. It says that no person shall prospect on crown lands or stake out or record or apply without a prospector's licence, and we know what all is involved with getting a prospector's licence.

People involved in tourism in the Bancroft area, we're not going to subject them—we ought not to be subjecting them to a prospector's awareness course and getting a licence. It ought to be clear. I think Mr. Bisson has come up with a good, sensible—just adding in there persons who collect rocks as a hobby. As I said, I'm really surprised that the government didn't bring that amendment in themselves after listening to Robert Beckett.

The Chair (Mr. David Oraziotti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: Again, just to make it clear: I think Mr. Hillier pointed out what I was trying to get at. The amendment says "land withdrawn under the act," and we're specifically talking about those crown lands that have been withdrawn in southern Ontario. That's the way that this is intended to be written—or lands that may be withdrawn further to the Far North Act, right?

So the concern is that there would be activity going on on some of those lands that somebody may be doing some rockhounding on. Again, as Mr. Hillier pointed out, if I don't want, as a private property owner, somebody to trespass on my property, I have recourse under other legislation to stop them from getting access. What this does is just makes it clear that if we withdraw crown land from any particular prospecting, we still allow those rockhounds to go in and do what they do best. Again, we didn't get into calling them rockhounds, because then we would have to change the definition clause—to your point. That's why we said "anybody who collects rocks as a hobby." So I see this as an amendment just to make clear that we're not going to stop rockhounds from going in to pick up the odd pebble, odd rock on a shoreline somewhere in southern or northern Ontario that they use for their collection.

The Chair (Mr. David Oraziotti): Mr. Brown, further comment? No? Seeing none, NDP motion—any further comments to add on the motion on the floor?

Mr. Randy Hillier: Again, we are all legislators here. Our purpose here is to craft up legislation so that the bureaucracy and the courts have a good, clear guideline of what the legislation is there for, and we're leaving this completely open. We're not giving them direction at all.

Listen, I've seen, first-hand, enforcement and application of legislation, and I'll tell you very clearly that the people who are enforcing that legislation do not search

back and look for the parliamentary assistant's intention of what they are enforcing. They look at the legislation that they're enforcing. And the legislation is silent about rockhounds. It's clearly open that somebody involved who wants to go up and collect rocks in Bancroft, there could be a time when somebody from MNDM or whoever else says, "Listen, you can't go out and collect those rocks unless you do a prospector's awareness program and get a prospector's licence, because that's what the legislation says—no prospecting on any lands unless you've got that prospector's licence." I think we should—that's our role and our responsibility here—provide clarity to the people who are going to be enforcing this legislation.

The Chair (Mr. David Oraziotti): Any further comments on NDP motion 11?

Mr. Randy Hillier: Recorded vote.

The Chair (Mr. David Oraziotti): Recorded vote.

Mr. Randy Hillier: A 20-minute recess.

The Chair (Mr. David Oraziotti): Okay, 20 minutes has been asked for. We return at 3:40. The committee is in recess.

The committee recessed from 1520 to 1540.

The Chair (Mr. David Oraziotti): Okay, committee, NDP motion 11 is on the floor. A recorded vote has been called for.

Ayes

Bisson, Hillier.

Nays

Brown, Jaczek, Kular, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Mr. Hillier?

Mr. Randy Hillier: I'd like to just take a moment of your time and put something on the floor here. We've been at this committee now in clause-by-clause for a while—it's actually, I believe, the fourth day, about 10 hours—and the only member from the Liberal side who seems to have any opinions on any of the amendments to this bill is the parliamentary assistant, Mr. Brown. He's the only one who has said anything on any of the amendments. I'd like to move that Mr. Brown be given the proxy votes for all the other Liberal members of the committee so that we can continue discussing this bill, and they can be freed up to pursue other work that may be more productive. So I'd like to move a motion that Mr. Brown be given the proxy votes for all other votes pertaining to amendments of Bill 173.

The Chair (Mr. David Oraziotti): Mr. Hillier, members of the government need to be here to vote. It's a bit of an odd request. I could ask the clerk to follow up on whether or not that's even possible, but it appears to me that the members of the government side are here and are voting on the motions that are before us.

Mr. Randy Hillier: Yes. As I said, we've been engaged in the discussion and the debate, but we've only heard from one member of the Liberal side. I think this will just recognize that the other members of the committee can go off and do something productive, that they're not engaged in the discussion of the debate. We would accept Mr. Brown's vote as voting for all members of the committee on the Liberal side.

The Chair (Mr. David Orazietti): I hear your comments. It's up to members of the government side whether they wish to comment on particular motions or not, but the motion that you've got before us is out of order. It's not possible. Members have to be here to vote.

With that, we're going to move on to the NDP motion that's the next item of business, 11.0.1. Go ahead, Mr. Bisson.

Mr. Randy Hillier: What standing order is that?

The Chair (Mr. David Orazietti): The clerk has indicated to me that he'll get you the exact standing order for that.

Mr. Randy Hillier: Thank you.

Mr. Gilles Bisson: Can we just come back to this, then? We can come back to this when you come back with the standing order? Thank you. I think it's a fascinating motion. He's being very efficient.

The Chair (Mr. David Orazietti): Are you asking—

Mr. Randy Hillier: Listen, we're all involved with constituency work, and there are lots of things that people need to be involved with. This is putting everybody's time to the most productive use.

The Chair (Mr. David Orazietti): You're asking for a recess? Is that what you're asking for?

Mr. Gilles Bisson: No, no. I'm just waiting for the clerk to come back. I'm ready for my amendment, Mr. Chair.

The Chair (Mr. David Orazietti): Go ahead.

Mr. Gilles Bisson: I move that subsection 35(2) of the Mining Act, as set out in subsection 14(1) of the bill, be struck out and the following substituted:

"Factors to consider

"(2) In making an order under subsection (1), the minister may consider any factors that he or she considers appropriate, including,

"(a) whether the lands, mining rights or surface rights are required for developing or operating public highways, renewable energy projects or power transmission lines or for another use that would benefit the public;

"(b) whether the order would be consistent with any prescribed land use designation that may be made with respect to the far north;

"(c) whether the lands are considered by aboriginal communities to be sites of aboriginal cultural significance; and

"(d) any other factors that may be prescribed."

I'm going to try to make this really simple. If you read the current wording of the bill, all I'm really doing here is breaking it up a little bit so it's easier to read, because right now it runs as one big long paragraph under (a). I'm just helping our legislative counsel learn a little lesson on

how you can draft things to make it easier to read for members and the public.

But I am adding something: I'm adding (c). The only thing that's different in this amendment—everything else is basically the same—the only addition is whether the lands are considered by aboriginal communities to be a site of aboriginal cultural significance. Again, that goes back to the point that I made earlier. It makes it clear that it's the First Nation that decides if there is a piece of land that happens to be a burial ground or other culturally significant ground, that it's not a process that they undertake with "the minister may or may not." It's a question that they notify and the minister withdraws.

The Chair (Mr. David Orazietti): Thank you. Mr. Brown, would you care to comment on that?

Mr. Michael A. Brown: Yes. The member is correct: The proposed amendment would leave the identification of sites of aboriginal significance totally at the discretion of aboriginal communities instead of establishing the criteria for these sites in regulation. So I would suggest to the member that that's what we really want to do: establish the criteria for these sites in regulation, and the government bill, as drafted, permits that.

The Chair (Mr. David Orazietti): Thank you, Mr. Brown—

Mr. Gilles Bisson: Excuse me; I'm just conferring with the clerk. I really apologize. The clerk was giving me an explanation on the previous issue, and I apologize, Mr. Parliamentary Assistant. If you could yet again explain?

Mr. Michael A. Brown: What the government seeks to do is to establish criteria for these cultural sites in regulation. So it's the criteria we want to establish, and from that flows what sites will be designated.

Mr. Gilles Bisson: Again, I guess I'm coming at it from a different perspective than the government. I just go back to the point that if you give First Nations the ability to decide what's going to happen on their traditional territories, there is going to be an incentive for them to open up territory for staking and for exploration.

I look at the communities within my particular riding—and I imagine it would be the same in most communities across Ontario—and they want to have development. They're not interested in living in poverty, as we have now. The case has been proven by projects such as the Victor mine up in Attawapiskat, the Musselwhite project up in the northwestern part of the province, where First Nations did agree, came to a conclusion that they wanted to have development, and negotiated an impact benefit agreement that benefited the members of those communities.

So I'm confident that at the end, what you're all going to get here is that you're going to build the comfort that's necessary for First Nations to understand that they have a say, and they will then have the incentive to be able to identify those lands that are significant: burial lands and others, as they are in our communities. I don't think that this will do anything but just make clear—in the end, it will, I think, give an incentive for First Nations to

identify those lands that are culturally significant so that they can allow development to go forward.

Mr. Michael A. Brown: The government's view is that we will consult with the First Nations, Metis groups and other aboriginal groups in the development of the criteria, but what I don't think any of us would want is an unstructured and undefined site identification proposed. It would lead to great inconsistencies across the board and could lead to even more uncertainty amongst aboriginal communities and stakeholders alike.

Mr. Gilles Bisson: Again, I don't want to lengthen the debate, but there have been far too many examples where things have happened on traditional territory without the consent, first of all, let alone sometimes the knowledge, of the First Nation; for example, Peawanuck. Peawanuck had a park that was created in and around it that basically bars the community of Peawanuck from traditional access to those lands. So Polar Bear Provincial Park was created, I believe, under Alan Pope, who was my predecessor back in the 1970s—maybe the late 1970s, early 1980s. When they created that park, it was done without the consent of the First Nation. Where are we today? That community can't even build a winter road out of their community. The only way that they can access their community is to either fly, take the barge or go around the park. They have tried, on a number of occasions, to work with the MNR and the parks people to get permission, to get land use permits to be able to cross the park so they can have a physical connection by winter road to Fort Severn and eventually out to Manitoba, and they can't get it.

So my point is, what happened there was done without their consent; it was done without their knowledge, initially. What we need to do is kind of reverse this thing around so that they're given the authority to decide what's going to happen on their traditional territories.

Listen, 99.9% of the lands that we talk about in the far north are undeveloped territories—99.999%. We've done a fairly good job—and they've done a fairly good job, in the thousands of years that they've been there—to protect it. So my point is that we need to make sure that First Nations understand and have the authority to continue protecting those lands. Development will happen, but they will just set the conditions by which that development is to take place.

Mr. Michael A. Brown: Well, that's exactly the point. The point is that the government will consult with First Nations and Metis groups in the development of the criteria to protect those sites. I think we're talking about the same thing, other than that we believe there needs to be criteria to define those sites or what would be a site so it's consistent across the crown lands.

Mr. Gilles Bisson: I agree there needs to be criteria. It's a question of who you want to establish the criteria. Should it be the province that decides what the criteria is vis-à-vis traditional lands and culturally significant areas or should it be the First Nations? I guess that's where the difference is. I agree with you, there needs to be some form of criteria, and that's what land use planning will

give you in the end. But if the ultimate decision to start the process and to finalize the process is the crown's, I can tell you, there are 100-plus years of history where we can show examples of where the crown did not properly consult and, as a result, infringed on traditional territories to the detriment of those First Nations communities.

I think what you're trying to do in this bill is the right thing: to set a framework by which there's clarity so that the mining industry, the prospectors and the explorationists understand what the rules are—I fear that we're not going to be there at the end of this legislation, the way it's going—but clearly one of the tenets of that is to make sure that in the far north and other places, the First Nations have a real say about what happens on their territory.

Nobody can go on my land out at Kamiskotia Lake and stake a claim or do exploration without my permission. That's the law of the land. Nobody can walk into the city of Timmins and decide that they're going to explore or do development without the consent of the community. My point is, why would we treat First Nations differently?

The Chair (Mr. David Orazietti): Mr. Hillier, further comment?

Mr. Randy Hillier: Under Bill 173, right now you're talking about criteria. But what it says—this is under 14(2)(a)—is, “prescribed land use designation that may be made with respect to the far north and whether the lands meet the prescribed criteria as a site of aboriginal cultural significance.” So when the minister takes these factors into consideration, we're saying again that's only in the far north, because it says “and whether the lands” after “the far north”—and we don't know what the criteria are. I guess I'm going to hear the point that those will be developed through regulations, but there are no criteria established under Bill 173. It just says the minister will take that into consideration. We're not sure what it is.

So I think the third party's amendment provides that clarity, again, of whose criteria it is going to be and that it applies to all First Nations and aboriginal communities, not just the ones in the far north, as the act now states. We have to be very clear that the words reflect the intention. What we're hearing from the government side is not reflected in the words within the act. Unless the government has another amendment to come through, this is a good, sensible, reasonable amendment that adds clarity and consistency—that all First Nations and aboriginal communities would be treated in the same fashion and that their criteria will be used to establish sites of cultural significance.

The Chair (Mr. David Orazietti): Thank you.

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): Recorded vote.

Mr. Michael A. Brown: Just very quickly, Mr. Bisson's amendment here does not speak to criteria at all. What it says is that an aboriginal community can just define the land. That would, in our view, lead to—the inconsistencies from one aboriginal community to another

of what they consider to be cultural significance could obviously be a problem, could obviously create uncertainty, could obviously do all of the things that we don't want to happen.

What we're saying is this act allows us, the government, to consult with First Nations and find criteria that describes these cultural areas of significance. I think the government's approach is far superior to the one that Mr. Bisson is offering, but that's a difference of opinion.

The Chair (Mr. David Oraziatti): Anything further?

Mr. Randy Hillier: Well, again, of course the act isn't allowing government or allowing—you used the word “allow”—the minister to consult. The minister is always allowed to consult and doesn't need special legislation to do that. What the act says is that he or she will take these factors into consideration. If the land is in the far north and it meets a prescribed criteria that is unknown at the moment, then he can withdraw it. Both the existing legislation and the proposed amendment don't speak to the criteria that we're talking about. Your argument is a little empty. What is the criteria?

Mr. Michael A. Brown: That's what we're about to define through consultation.

Mr. Gilles Bisson: I'm not going to hold this up because it's pretty clear I'm going to lose the amendment. I don't want to just slow the process down for the sake of doing so, but I just want to say—

Mr. Michael A. Brown: Oh?

Mr. Gilles Bisson: Listen, I have not been slowing this process down; you guys can say what you want. I've raised amendments. In fact, there's been some movement on the part of the government, on the part of a couple of amendments that you've now redrafted and brought your own. I think it's been a constructive process for all.

But I just want to make the point that it's a difference of point of view about who should be doing the definition. That's really where I think we're at odds here. I agree with you, as I said, that there needs to be some form of criteria about how this happens so it's not just that somebody decides one day that they're going to change the methodology on a whim. But I do believe that the First Nation has to be leading that process because there have been far too many examples in the past where the province has done it, and their best interests were not protected.

The Chair (Mr. David Oraziatti): Okay. You had earlier indicated that you wanted a recorded vote on this.

Mr. Gilles Bisson: Yes, I did.

Mr. Randy Hillier: And we'll take a 20-minute recess.

The Chair (Mr. David Oraziatti): A recorded vote has been called for, and a 20-minute recess—back at 4:18. The committee is in recess.

The committee recessed from 1558 to 1618.

The Chair (Mr. David Oraziatti): Okay, members. The motion before us is NDP motion 11.0.1. A recorded vote has been called for.

Ayes

Bisson, Hillier.

Nays

Flynn, Jaczek, Kular.

The Chair (Mr. David Oraziatti): The motion is lost. We'll go to Conservative motion number 11.1. Mr. Hillier.

Mr. Randy Hillier: Thank you. There is a slight wording change, so I'll read this out with the revised wording.

I move that subsection 35(2) of the Mining Act, as set out in subsection 14(1) of the bill, be amended by adding the following clause:

“(a.1) except when the rights are with respect to mining rights for lands for which there is a private surface rights owner;”

There was some incorrect drafting on that.

The Chair (Mr. David Oraziatti): Do you want to read that one more time, just to make it clear for everyone?

Mr. Randy Hillier: I move that subsection 35(2) of the Mining Act, as set out in subsection 14(1) of the bill, be amended by adding the following clause:

“(a.1) except when the rights are with respect to mining rights for lands for which there is a private surface rights owner;”

The Chair (Mr. David Oraziatti): Okay, I think we're clear on that. If you want to add some explanation to the motion, go ahead.

Mr. Randy Hillier: Subsection 14(1): Again, we're talking about withdrawal of lands, and we've gone through a number of these criteria and what can be withdrawn. This clarifies it and respects some of the concerns that were raised during the committee hearings, that private surface rights owners have the ability to determine what actions and activities happen on their lands.

There's one here from—and this is again reaffirming those property rights. OREA was one of the first ones to bring this up in the committee hearings in Toronto, and what OREA said was: “First, OREA notes that the purpose of Bill 173, as set out in section 2, does not mention or affirm the rights of surface rights owners. Therefore, we strongly recommend that section 2 be amended to include wording that recognizes and affirms the rights of surface rights holders, as has been done for aboriginal and treaty rights.”

There's a whole host of areas where we've heard about this through our committees and listening to many people who made deputations to the committee that we need to strengthen the rights of property owners. That's what this amendment speaks to: those withdrawals. I'll also go back to our previous discussions of—was it the last day? I believe it was the last day when I mentioned that the minister still has the authority, under this present Bill 173, to withdraw his withdrawals. That's in section 4

of the same thing—14(4). This withdrawal of mining activity on surface rights owners can, indeed, be withdrawn again. So we need to strengthen this so that private property owners are not left to the whim of whatever minister comes in and whatever policy they may determine at that time.

I'll just read this from subsection 14(4), "Reopening of lands." Section 14, of course, talks about the withdrawal of lands; 14(4) is the reopening of lands: "The minister may, by order signed by him or her, revoke all or part of a withdrawal order made under subsection (1) and reopen for prospecting, staking, sale and lease any of the lands, mining rights or surface rights or parts of them withdrawn under this section."

So are we going to protect those private landowners and respect their property rights, or are we just going to leave it to whatever the minister may decide at any time?

The Chair (Mr. David Oraziotti): Any further comment on this motion, 11.1? Mr. Brown.

Mr. Michael A. Brown: The proposed subsection is out of place, as withdrawals and reopenings apply only to crown mineral rights, not privately patented lands that include mineral rights. The bill already includes a scheme for withdrawing and reopening crown mineral rights on private lands in northern and southern Ontario. Property owners would determine whether their land could be reopened to staking.

As for subsection (b), municipal plans do not apply to provincial crown land within municipalities. Municipal official plans do not prevent mineral claim staking or exploration activity because it's not considered a land use. If an actual mine were to be developed on private land within a municipality, the land would have to be zoned for that use. Municipal plans are developed using provincial policy statements under the Planning Act. The provincial policy statement requires a planning body to apply all the relevant policies it contained in the statement regarding provincial priorities, which include the protection of mineral resources. The mineral resource policy does not trump any other planning policy. So we will not be supporting the amendment.

Mr. Randy Hillier: Let me just clarify here: It says, under subsection 14(1), "The minister may, by order signed by him or her, withdraw from prospecting, staking, sale and lease any lands, mining rights or surface rights that are the property of the crown...." When there is a surface-rights-only owner, the mineral rights are owned by the crown. They shall remain withdrawn until reopened by the minister. Then it lists a whole bunch of things. In it, it also says, in subsection (4): "The minister may, by order signed by him or her, revoke all or part of the withdrawal order made under subsection (1)...." So if I own my piece of property and the crown owns the mineral rights and I'm in southern Ontario, it says that the mineral rights are withdrawn from exploration, and then it says they can be reopened—not with my consent, not with the owner's consent, other than the owner of the mineral rights, which is the crown. So this is the back door to the back door with the government policy here:

telling everybody that they're withdrawing the mining from private lands, but then giving the back door in subsections (1) and (4) that those withdrawals can be withdrawn.

Is it the government's intention to protect private property—the peaceful use and enjoyment of people and their properties—or is it not? Is it the government's position—this appears to be just posturing with all the wiggle and all the weasel that we've got in here. We're telling everybody that they're going to be able to have peaceful use and enjoyment of their property in southern Ontario, but we can change our minds any time we want. That's what the act is saying.

The Chair (Mr. David Oraziotti): Thank you, Mr. Hillier. Mr. Bisson?

Mr. Gilles Bisson: I'll just add that, technically, Mr. Hillier's right: The crown has withdrawn those lands from staking, no question, but at any time the crown can revert and put them back in. I think that's the point that you're trying to make. If you're taking them out, take them out.

Now, there are two sides to that argument. There are some who would argue that you would want to leave the crown with the authority to do so, and there are those who say no, you should strictly just respect the property owner. There are two sides to that one. I think you make a valid point.

Mr. Randy Hillier: Well, we've heard the government's words that they're going to address the concerns of that 1.4% of private landowners in southern Ontario. The government has said that they are going to respect their peaceful use and enjoyment by withdrawing staking and exploration on those private lands where the crown owns the mineral rights.

Mr. Michael A. Brown: That's true.

Mr. Randy Hillier: And then you've got subsection (4) that says, "Forget everything I said. I'm going to continue to retain ownership and be able to exercise full ownership over those mineral rights." It can't be squared. Either you're going to respect those private landowners and their peaceful use and enjoyment or you're not, and this is saying that you're not.

Mr. Michael A. Brown: Mr. Hillier, the government is going to withdraw the staking rights that belong to the crown at present from staking private lands. That's what's going to happen.

Mr. Randy Hillier: Then why have subsection (4) in there?

Mr. Michael A. Brown: Subsection (4) would permit, within extenuating circumstances, I would guess—I can't even think of one. But there may be the opportunity to—we've had people who wanted to reunite their private lands with the mineral rights. There may be reasons to do that. I shouldn't presume what a private landowner should want to do with his or her own land.

1630

Mr. Randy Hillier: You're missing the point.

Mr. Michael A. Brown: I don't think so.

Mr. Randy Hillier: Absolutely. This would be all solved if, instead of withdrawing the ability to stake and then leaving that back door open, the government in Bill 173 said, "We are going to reunite the crown mineral rights that are excepted or alienated from surface rights owners." If the crown did that, there would be no questions. It would be reunifying those conflicting rights back to the proper owner of those mineral and surface rights. Instead of doing the right thing and reunifying those mineral and surface rights, you're talking about appeasing these people by withdrawing but keeping the door wide open to withdraw that withdrawal.

Mr. Gilles Bisson: Can I ask a question of Mr. Hillier? I just want to understand. If you did reunite the crown mining rights with the property landowners who have relinquished those rights some years ago—probably not themselves, probably the previous owners—are you saying that, in fact, then it would take some form of permission? It would allow, then, anybody who has private land to allow staking on their private land.

Mr. Randy Hillier: Absolutely.

Mr. Gilles Bisson: With permission.

Mr. Randy Hillier: Absolutely. It's the same as how we treat the 98.6% of people with private land now. If, on my piece of property, I own the mineral rights and somebody wants to explore and stake on my property, they'd need my consent. Let's give the same consideration, the same protection and the same respect of the law to that 1.4% of land that is off limits.

Mr. Michael A. Brown: I'm going to ask if legal counsel, Ms. Wyatt, could help us out here.

The Chair (Mr. David Oraziotti): Of course.

Ms. Catherine Wyatt: I think there's some confusion here between what is section 35 of the bill and 35.1 of the bill. Section 35 is that general withdrawal power that we've been talking about in these recent motions. The part about the reopening that Mr. Hillier's referring to cross-references back to 35(1), which is one of those general-type withdrawals that can be undone by a reopening.

If you look at section 35.1, that is the provision which deals with the automatic withdrawal of lands from staking in southern Ontario and the withdrawal of lands in northern Ontario on application.

The reopening that you're concerned about in section 35 does not apply to 35.1, that automatic withdrawal of lands in southern Ontario. They cannot be undone and reopened in that manner.

The way of reopening, as set out in the bill now, is set out in subsection 35.1(8). I believe there may be a motion to amend this, but for the time being in Bill 173, if you look at subsection 35.1(8), you will see that where the mining rights have been withdrawn under subsection (2), which is southern Ontario, or have been withdrawn under subsection (5), which would be the northern Ontario application, then a surface rights owner may apply for an order to open those lands again.

The statute has actually spelled out that the only way to reopen in those cases is by the surface rights owner

asking for it. Perhaps that might clarify some of the confusion.

Mr. Randy Hillier: It says right here in 14(1) that these lands will be withdrawn, and then there were factors to consider, and of course it goes on to other things. But this is exactly what I'm speaking about: where the crown owns the mineral rights, and that's what it stipulates in 14(1). Right?

Ms. Catherine Wyatt: Yes.

Mr. Randy Hillier: Then it goes on to say that any of those lands that have been withdrawn can be reopened by the minister. It goes on to give further differences between southern Ontario and northern Ontario, but right at the beginning it says that those lands can be withdrawn.

My amendment goes right back to number (1), that we add in a statement there, "except with respect to mining rights for lands for which there is a private surface rights owner." Then the minister can't withdraw the withdrawal.

The Chair (Mr. David Oraziotti): Any comments?

Mr. Michael A. Brown: I'll just try again here. If you look at subsection (8), it says, "If mining rights have been deemed withdrawn under subsection (2) or have been withdrawn by order under subsection (5), a surface rights owner"—a surface rights owner—"may apply to the minister for an order opening the mining rights for the lands or any part of them...." So the surface rights owner may apply. That's who can apply, nobody else: the surface rights holder.

Mr. Randy Hillier: It says the surface rights owner may also do that, but that doesn't dismiss number (4).

Ms. Catherine Wyatt: Subsection (4), which you're referring to, refers back, in turn, to a withdrawal that has been made under 35(1). It does not refer to a withdrawal that has been made automatically under 35.1. You can't sort of cross-read those sections. This would apply to an order that had been made for a withdrawal under 35(1).

If you want to find out what happens to those automatic withdrawals in southern Ontario, you go to 35.1, the following section, and that says what happens when it's an automatic withdrawal. The way for it to be reopened is only as set out in (8), where the surface rights owner requests it to be reopened. It's a different kind of withdrawal under a different section of the act.

Mr. Randy Hillier: Section 14 applies. It says, "Subsections 35(1), (2), (3) and (4) of the act are repealed and the following substituted...." So right at the beginning it lays things out. It also says that the lands in southern Ontario will be deemed to be withdrawn. There's nothing in there that says that the first part of 14 doesn't apply—nowhere.

The Chair (Mr. David Oraziotti): Okay, I think we've heard the comments from both sides on this issue. Conservative motion 11.1 is on the floor. I don't see any further comments, so we'll vote on the motion.

All those in favour of the amendment 11.1—

Mr. Randy Hillier: Could I have a recorded vote?

Ayes

Bisson, Hillier.

Nays

Brown, Flynn, Jaczek, Kular, Mangat.

The Chair (Mr. David Oraziotti): The motion has been lost.

Conservative motion 11.2, Mr. Hillier.

Mr. Randy Hillier: We're back right into the same one. We'll read it again.

I move that the following subsection be added after subsection 35(4) of the Mining Act, as set out in subsection 14(1) of the bill:

"Same

"(4.0.1) Subsection (4) does not permit the minister to reopen lands for staking, sale or lease,

"(a) if the lands are privately owned;

"(b) if the lands are designated in a municipal official plan for a use that is incompatible with mining."

The Chair (Mr. David Oraziotti): Any further comment on that? Mr. Bisson.

Mr. Gilles Bisson: Just on the (b) part of the amendment, I had a similar amendment that I believe I put forward. I'm not sure if I have or haven't, but it speaks to that same issue in regard to making sure we respect municipal official plans. That was a whole issue that we heard during the time in committee, and I can support that.

1640

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Randy Hillier: Here again, from Maria Harding—she represented the municipality of Shuniah, in the district of Thunder Bay, in her presentation to the committee. She went on to say, "To really protect the environment and private landowners' rights, the act has to be able to address the following issues." And she talks about private land ownership, which is clause (a) of my amendment. In her presentation it says, "Fourthly, the legislation shall ensure that within an organized municipality the land use planning process precedes any mining activity and that a statutory prohibition on prospecting, exploration or mining in areas that are covered by an official plan, which lies within the Planning Act, is subject to a public consultation process with municipal councils and affected landowners."

That's the message that was being heard and that's what this amendment proposes: It "does not permit the minister to reopen lands for staking, sale or lease,

"(a) if the lands are privately owned;

"(b) if the lands are designated in a municipal official plan for a use that is incompatible with mining."

Again—and I don't know how many times I've said it—the purpose of Bill 173, the whole purpose of reopening the Mining Act, was to eliminate the conflicts. We're not there. We haven't done a very good job.

This same member of the municipality went on to say, "Private landowners in northern Ontario should have the same rights as those in other parts of the province. The legislation gives the First Nations the right to say no to prospecting on traditional lands, a right they should have. Why can't these same rights be given to private landowners who do not own mineral rights on their respective lands?"—furthering on with that recognition of equality that ought to be in the legislation.

Mr. Michael A. Brown: I think we've dealt with the issue of private lands. But I'll repeat this: Municipal official plans do not apply to prevent mineral claim staking or exploration activity, which are not considered a land use.

Mr. Randy Hillier: What was that last part that you said?

Mr. Michael A. Brown: Here, I'll do it again: Municipal official plans do not apply to prevent mineral claim staking or exploration activity, which is not considered to be a land use. If an actual mine was to be developed on private land within a municipality, the land would have to be rezoned for that use. So in other words, if you were actually going to or wished to open a mine on private land, then you would have to comply with the official plan and zoning. Municipal plans are developed using the provincial policy statement under the Planning Act. The provincial policy statement requires a planning body to apply all the relevant policies contained in the statement regarding provincial planning priorities, which includes the protection of mineral resources. The mineral resource policy does not trump any other planning policy, so they need to be considered.

I think that answers your question—I hope.

Mr. Randy Hillier: This should be so simple for the government side to understand. Really, I find it difficult that we've been debating and discussing these concepts so much, that the Mining Act ought to respect these—we know right from the beginning that this act does not protect municipalities or does not reunify private mineral rights with surface rights owners. So we're trying to strengthen that protection that has been talked about, and we're not getting there. We've seen and heard from so many—municipalities, private landowners, different groups, associations, OREA—and I guess it's just falling on deaf ears.

If we want to prevent conflicts down the road, we ought to be having it clearly identified. You're saying that if somebody opens up a mine, they would have to be in compliance with the official plan, right?

Mr. Michael A. Brown: On private land.

Mr. Randy Hillier: Okay. So you can go out and explore and do anything you want, and the municipality has no say, under Bill 173 and under the present act. We know that exploration is all acceptable, except for in the far north; that will be dealt with in a different fashion. Exploration won't be allowed unless it fits in with the land use plan. So you're saying that somebody can go to all that expense of doing exploration work, without municipal partnerships participating in decision-making,

but then if they do find something, then they do need to get municipal authority, right?

Mr. Michael A. Brown: On private land, you would require the approval of the—

Mr. Randy Hillier: For the mine.

Mr. Michael A. Brown: —municipal official plan and zoning. Yes, you would. You're right.

The Chair (Mr. David Oraziotti): Okay. Is there any further debate on this matter? Mr. Hillier? Motion 11.2: anything new to add to the discussion on this issue?

Mr. Randy Hillier: No.

The Chair (Mr. David Oraziotti): Okay. We'll vote on 11.2. All those in favour? All those opposed? The motion is lost.

Next item is 11.3. Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that section 14 of the bill be amended by adding the following subsection:

"(3) Subsection 35(5) of the act is repealed."

Subsection 35(5) of the act now states:

"Working on behalf of crown

"(5) The Lieutenant Governor in Council may direct that the mines and minerals in lands, mining rights or surface rights, or in any part thereof, withdrawn under this section may be worked by or on behalf of the crown."

Under Bill 173, that clause remains. It says—again, this is just inconsistent with the act, with Bill 173: "in lands ... or in any part thereof, withdrawn under this section may be worked by or on behalf of the crown." That should be struck out. If your arguments are indeed correct, then there is no need to have subsection (5) in there.

The Chair (Mr. David Oraziotti): Mr. Brown, go ahead.

Mr. Michael A. Brown: This section is existing in the present legislation, and we are prepared to support your amendment.

Mr. Randy Hillier: Oh.

Mr. Gilles Bisson: So what are we striking out—35(5)?

Mr. Randy Hillier: Subsection 35(5).

Mr. Gilles Bisson: That's the northern Ontario one?

Mr. Randy Hillier: No.

1650

Mr. Gilles Bisson: What page are we at? Excuse me.

Mr. Randy Hillier: It's in the original—

Mr. Gilles Bisson: I don't have the original bill with me; that's the problem. I should have brought it with me. So what are they striking out?

Interjection.

Mr. Gilles Bisson: Yes, okay.

The Chair (Mr. David Oraziotti): Any further comments on this motion? Any further comments on 11.3? Seeing none, all those in favour of 11.3? All those opposed? Carried.

Section 14: Shall it carry, as amended? All those in favour? Carried.

Conservative motion 11.4: Mr. Hillier.

Mr. Randy Hillier: I move that subsections 35.1(2), (3) and (4) of the Mining Act, as set out in subsection 15(1) of the bill, be struck out and the following substituted:

"Southern Ontario

"(2) For lands where there is a surface rights owner and the mining rights are held by the crown, the mining rights shall be transferred to the owner of the surface rights, and that transfer shall be deemed to have taken place at the time when the lands were originally alienated from the crown.

"Limited extension of rights to minerals under private land

(3) Despite subsection (2), any mining claims, mining leases or licences of occupation with respect to minerals that are owned by the crown under privately owned land that exist on the day this section comes into force shall continue until the end of the fifth year after this section comes into force or until the expiry of those claims or leases, whichever is sooner.

"Same

"(4) No extension shall be granted for any mining claim, mining lease or licence of occupation after the expiry of the period described in subsection (3) unless on the date of expiry a mine is in substantial operation under the mining claim, lease or licence.

"Transfer to the landowner

"(5) If a mining claim, mining lease or licence of occupation reverts to the crown, the minerals shall be transferred to the owner of the surface rights and the transfer shall be deemed to have taken place in fee simple at the time when the lands were originally alienated from the crown."

It's a lengthy one, but again, let me try to—we'll start with the first: southern Ontario. First off, we're saying to transfer those mineral rights that are held by the crown now on private lands, to put them back into the hands of the surface rights owner.

Subsection (3) is a recognition that there may be mining claims and leases on crown minerals on private property. That's recognizing that those claims are still valid and still legitimate, but that they have a time frame and that they will expire after five years, unless—in subsection (4)—there is a mine in substantial operation. This is just ensuring that business has a safe and certain and predictable business environment.

Finally on subsection (5), if, after that period of time, the occupation or the mining lease reverts to the crown, the minerals at that time will be transferred to the owner of the surface rights and it will be deemed to have taken place when they were originally alienated from the crown.

That, I believe, is what the minister and the government have set out to try to achieve: the peaceful use and enjoyment of private property that the amendment speaks to, and that makes for the allowance if there is already exploration work going on on private lands where the crown owns mineral rights.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Michael A. Brown: Just briefly, the bill includes provisions to withdraw crown mineral rights from private lands in order to respect the rights of private property holders that do not own the mineral rights to the land. The government policy direction does not contemplate divesting crown mineral rights to private landowners or forcing claim or lease holders to relinquish their mining lands. So this is not going to be retroactive, I guess, is what that really says.

Mr. Randy Hillier: No, we're not talking about retroactive. Again, if you look at the present wording in Bill 173, it talks about existing mining licences and leases in southern Ontario with respect to surface rights owners. It says here that any existing "mining claims, mining leases or licences of occupation for mining rights existing on the day this section comes into force shall not be affected by the deemed withdrawal under that subsection and shall remain open for prospecting, sale or lease." What I'm suggesting here is that we put a time frame for that. Right now, there is no time frame. That can continue on indefinitely under Bill 173—the exploration on private property.

The Chair (Mr. David Oraziotti): Any further comments? Mr. Bisson.

Mr. Gilles Bisson: I partly support what Mr. Hillier's trying to do, but I need legislative counsel or the lawyers from the ministry here just to understand something. If you actually did that in communities like Timmins and Sudbury where there is a lot of private land to which they don't own the mineral rights—those mineral rights are actually owned by the crown—you could end up in a situation where some property owner somewhere may decide not to allow any development to happen within that community, and I think his amendment deals with an existing—

Mr. Randy Hillier: Southern Ontario.

Mr. Gilles Bisson: No—

Mr. Randy Hillier: It's just dealing with southern Ontario right now.

Mr. Gilles Bisson: Okay. Thank you. I withdraw. The technical question, then, is—no, never mind. It's a northern Ontario application.

The Chair (Mr. David Oraziotti): Okay. Motion 11.4, any further discussion?

Mr. Randy Hillier: I'd like to see the answer. If there is a mining claim on right now, on private land, where the crown owns the mineral rights, they are not part of this withdrawal under the present bill, right?

Mr. Michael A. Brown: That's correct.

Mr. Randy Hillier: And there is nothing in there to initiate them to be part of the withdrawal. Is that not what the government is looking to do, to withdraw that exploration on private property in southern Ontario?

Mr. Gilles Bisson: Only that which is crown.

Mr. Michael A. Brown: I'm confused, so we'll maybe ask somebody who—I'm confused by the question.

Mr. Gilles Bisson: My understanding, just in fairness to Mr. Hillier, is that it would be that the crown is not

affecting people who currently own private land and own mineral rights. The only way the policy applies is where it's crown land.

Mr. Randy Hillier: No, no.

Mr. Gilles Bisson: Well, then I don't understand.

Ms. Catherine Wyatt: Yes, I'm not sure I understand the question myself. The idea is that where there is a withdrawal in southern Ontario and people own the surface rights but not the mineral rights, and where somebody already has a mining claim or a mining lease in place, they're allowed to continue that tenure.

Mr. Randy Hillier: That's right.

Ms. Catherine Wyatt: And what I understand your amendment to be doing in subsection (3) is to put a five-year limit on a lease or a claim, and it would just end then, if it hadn't already terminated.

1700

Mr. Randy Hillier: That's right. If there's not a mine in operation, or substantially in operation, within five years. Because, under Bill 173, if that person keeps that claim open—

Mr. Michael A. Brown: Which requires certain steps.

Mr. Randy Hillier: Yes, which requires—well, or payments in lieu.

Mr. Michael A. Brown: We'll deal with that later.

Mr. Randy Hillier: We'll deal with that after. But it will probably pass, I would think, that one.

Mr. Michael A. Brown: It's similar to the existing provision in the act, just in case you're wondering.

Mr. Randy Hillier: But anyway, let's not get side-tracked too far here. If there is private land where the crown owned mineral rights and somebody has a claim on that land, or a licence, as long as he keeps that licence open and as long as he continues to make payments or do work, that land will never be withdrawn. There's no mechanism in the bill to withdraw that land.

What I'm suggesting here, under the second paragraph, is that there would be an end date for that claim, unless they actually found something and started mining.

Mr. Michael A. Brown: Just so I can be clear with this, are you suggesting that after five years, you confiscate—

Mr. Gilles Bisson: —your mining rights.

Mr. Michael A. Brown: —the mining rights from a legitimate owner? That's what you're talking about. Is that what you want to do?

Mr. Randy Hillier: I want the mineral rights to revert back to the surface rights owner, who had them taken away from him in the first place.

Mr. Michael A. Brown: No, no.

Mr. Randy Hillier: And that's—no, no, listen: If the claim has got potential within five years and if a mine gets developed, then of course you can't. But are we going to allow the claim to remain open indefinitely and not ever provide that surface rights owner with the same protection that we're talking about in Bill 173?

Mr. Michael A. Brown: Just to be clear here, the mineral rights owner—

Mr. Randy Hillier: —is the crown.

Mr. Michael A. Brown: —is the crown. But someone has the mineral rights staked. He or she or the company, or whoever it is, is doing the required work under the Mining Act to keep this open. You want to confiscate that from the person who is doing what he or she or the company is doing today.

Mr. Gilles Bisson: No, that's not what I understood.

Mr. Randy Hillier: No, it's not—

Mr. Michael A. Brown: The crown would confiscate it, then.

Mr. Randy Hillier: The crown owns it. The crown can't confiscate from itself, right? The crown owns the mineral rights. It is under licence to an exploration or prospector to do activities. I'm saying if that person has not found something in five years and created a mine, then that claim becomes invalid. It has an end date. It's not a case of confiscation. It's an end date for their permitted licence.

Ms. Catherine Wyatt: It would, however, also include mining leases, I understand, which is a 21-year lease, so that would be taken away after five years as well.

Mr. Randy Hillier: Unless there was demonstrated activity, a mining—

Mr. Michael A. Brown: But they are.

Mr. Randy Hillier: No. I've put in here, "unless on the date of expiry a mine is in substantial operation." That's what I'm suggesting. But let's go right back to the very first paragraph of that, where I'm saying that "the mining rights shall be transferred to the owner of the surface rights." Where the crown owns the mineral rights underneath private property, that we transfer that ownership back to the rightful owner and then we have the mechanism in place to recognize and respect legitimate claims that are in place right at the present time.

The Chair (Mr. David Orazietti): Mr. Bisson, would you like to add to the discussion?

Mr. Gilles Bisson: I don't want to add to the discussion; I'm trying to understand it.

Mr. Michael A. Brown: You and me both.

Mr. Gilles Bisson: I respect what you're trying to do, but I'm not quite clear that this is going where you want. If I understand your sub (3), what that does—(2) gives you back the mineral rights that are now owned by the crown as a private landowner. Sub (3) says that if you don't do anything with the land for five years, then it reverts to the crown.

Mr. Randy Hillier: No.

Mr. Gilles Bisson: "Despite subsection (2), any mining claim, mining leases or licences of occupation with respect to minerals that are owned by the crown under privately owned land that exist on the day this section comes into force shall continue until the end of the fifth year after this section comes into force or until the expiry of those claims or leases, whichever is sooner."

Mr. Randy Hillier: Sooner, yeah.

Mr. Gilles Bisson: So what happens after the fifth year?

Mr. Randy Hillier: Then they revert to the private landowner in number (2), for "Lands where there is a surface rights owner and the mining rights are held by the crown."

Mr. Gilles Bisson: Okay. Let's say I accept that. Now I get back to sub (2), and I think this is the one that is the real kicker: that if I currently own private land and I own the mineral rights, I have to pay mining land tax, right?

Mr. Randy Hillier: No.

Mr. Gilles Bisson: I'm looking to my friends at the ministry. So if I'm a private landowner who owns the mineral rights—it's not the crown rights; I own the mineral rights—I pay a mining land tax.

Ms. Catherine Wyatt: If they're used for mining purposes.

Mr. Gilles Bisson: But there are some who are paying, we heard at committee—

Ms. Catherine Wyatt: Yes. There is a small group where, depending on how the original crown patent was obtained, they may be paying mining land tax, yes.

Mr. Gilles Bisson: That's right. But there are people who own private land, who own mineral rights and who pay a mining land tax. Wouldn't this have the danger of putting them in a position of having to pay mining land tax on land to which the mineral rights are then reunited? As I've been listening to this debate—

Mr. Michael A. Brown: It can't be property tax—

Mr. Randy Hillier: No, but let me add some clarification there. If you have the mineral rights—

Ms. Catherine Wyatt: In theory, but to be clear, it would only be in that—again, you would have to be going back to the original patent, depending on what it said.

Mr. Gilles Bisson: To the original patent, exactly. It wouldn't be every property owner.

Ms. Catherine Wyatt: I'd have to double-check that, but the fact that the mining rights have been severed at some point may also make a difference. The fact that they had been severed at one point, even when they're put back together—we'd have to take a look at that.

Mr. Gilles Bisson: Mr. Hillier, I'll give you a chance to respond, but what got me going is that the mining rights "shall be transferred to the owner of the surface rights, and that transfer shall be deemed to have taken place at the time when the lands were originally alienated from the crown." So if I have land that would be normally subject to land tax because of the way that the mining rights were severed, I could be paying mining land tax back to 1930, 1920, 1952, if it happens to be that class of land. That's the way I read it.

Mr. Randy Hillier: I'll add clarification. The mining tax is not applicable. It's not to be levied unless there are a couple of factors.

Mr. Gilles Bisson: That's right.

Mr. Randy Hillier: One is that it is actually being extracted; it's being developed. And also, if it is in an organized municipality, and again this amendment deals with southern Ontario, so all our properties are in municipalities here—

Mr. Michael A. Brown: No.

Mr. Randy Hillier: In southern Ontario?

Mr. Michael A. Brown: Some are in unincorporated municipalities—

Interjection.

Mr. Randy Hillier: Okay. Ninety-nine per cent of the land in southern Ontario is within recognized municipalities. So, land that is in municipalities is not subject to mineral tax unless there is the extraction and development of minerals, right?

Ms. Catherine Wyatt: Or clause 189(1)(c), mining rights in, upon or under lands in a municipality where they were patented under a statute “for mining purposes.” So it’s both, outside a municipality and inside, if the original patent was for mining purposes.

Mr. Gilles Bisson: That’s in the old bill, the existing one?

Ms. Catherine Wyatt: That’s in the existing act.

Mr. Randy Hillier: Okay. That’s 189?

Ms. Catherine Wyatt: Yes.

Mr. Randy Hillier: Let’s get to that page. Oh, we don’t have these—

Mr. Gilles Bisson: Section 189. So, that was my point—

Mr. Randy Hillier: So that would be a small portion. It would have to be in unorganized territories and where lands were patented out for mining purposes, right? Then they would be subject to the mining tax, and I would say to you that if that’s the case, then they’ve already been paying the tax.

1710

Mr. Gilles Bisson: No, because they were—

Mr. Randy Hillier: Oh, that’s right. If they had reverted to the crown, then—

Mr. Gilles Bisson: That was my point. That’s why I sort of sat back—

Mr. Randy Hillier: Then I would be happy to make another amendment afterwards to exclude those properties from being subjected to an unreasonable taxation in those few cases.

Mr. Gilles Bisson: The point I make is, the way that this particular amendment is written, I couldn’t support it because what it will end up doing, if passed, is that there are certain lands, under 189—if you reattach the crown mining rights to the private property owner, they could end up paying mining land tax dating back to 1920, depending on when the original mining rights were relinquished. I’m sure that’s not what you want.

Mr. Randy Hillier: Let me just take a quick read here at 189.

Mr. Gilles Bisson: I’m just helping you out here. I’m trying to maintain property owners’ rights. We don’t want them to go broke.

The Chair (Mr. David Orazietti): Okay, anything else?

Mr. Randy Hillier: Yes. I’m just reading through here. If you can give me a couple of minutes to take a peek.

Mr. Gilles Bisson: That’s the danger when you read legislation at night, you think of these things.

Just a quick question, to give Mr. Hillier the chance to read: Nobody really has a handle on how much land that would mean, right? Ninety some-odd per cent of private land where a person has surface rights—what’s the percentage of land to which people in southern Ontario own both the mineral and property rights? It would be fairly high, 90-something, I would think, right? In that 90-something per cent of people, farmers and everybody else, there would be a percentage of people who would be caught in this, and as I read it, there would be a whole chunk of them. So lands liable for the tax would be “all lands and mining rights in territory without municipal organization patented under or pursuant to any statute, regulation or law at any time....” That’s a whole whack of land, just in that section alone. Because a lot of those lots were given—the original patent was like 300 years ago in some cases, right? Do you follow where I’m going? It could really get messy.

I just thought I would help both the government and the Conservative caucus in this case.

The Chair (Mr. David Orazietti): Thank you very much.

Mr. Gilles Bisson: You’re welcome. I will vote against it on that basis, was my point.

Mr. Randy Hillier: Section 189(c) says “all mining rights in, upon or under lands in a municipality patented under or pursuant to any statute, regulation or law at any time in force authorizing the granting of crown lands for mining purposes.” They’re subject to taxation as well.

Do we have any idea how much land would fall under that category? Do we have any idea how many—

Mr. Gilles Bisson: It would be a whole chunk of it. Just read the definition. The problem is that because of the way your amendment is written, it says it goes back to the original date to which the mining rights were alienated from the land.

Mr. Randy Hillier: They’re deemed to be. You can’t actually historically change what has happened, but we’re now deeming that they’re recognized as having always been there. So may I suggest, Mr. Bisson, if we amend that motion—

Mr. Gilles Bisson: Well, I was going to suggest, to move this thing along, that we can put this one aside and come back to it and you can reintroduce an amendment that does what you want.

Mr. Randy Hillier: Sure.

Mr. Gilles Bisson: I’m just trying to be helpful.

Mr. Randy Hillier: I’d be more than pleased to revise that amendment—

The Chair (Mr. David Orazietti): Government side.

Mr. Michael A. Brown: Are you withdrawing the amendment?

Mr. Randy Hillier: No, we will stand it down and I’ll come back with some slight revision—I’m not sure.

Interjections.

Mr. Randy Hillier: I can withdraw and reintroduce a revised amendment.

The Chair (Mr. David Orazietti): You can withdraw it.

Mr. Randy Hillier: Yes, but we're still accepting amendments.

The Clerk of the Committee (Mr. Trevor Day): We are still accepting amendments, so as long as we don't leave this section—

Mr. Gilles Bisson: I was going to say, Randy, you don't want to go there.

The Clerk of the Committee (Mr. Trevor Day): To return to this section, it would be unanimous consent.

Mr. Gilles Bisson: So the conundrum we have now is, it's either the committee as a whole wishes to set this aside—and the committee can decide to do that and come back later and allow you to reintroduce your new amendment—or there's going to be a vote on the amendment. That's kind of where we're at.

Mr. Randy Hillier: No, I'll let it stand and then look at bringing in a revision for that exception, should it pass.

Mr. Gilles Bisson: Okay, I hear you.

Mr. Michael A. Brown: So we're voting?

Mr. Gilles Bisson: I think that's what we're doing.

Mr. Randy Hillier: We'll vote.

The Chair (Mr. David Orazietti): And then you can reintroduce another one if you're—okay.

Interjection.

The Chair (Mr. David Orazietti): Yes, 11.4 is on the floor, a Conservative motion. All those in favour?

Mr. Randy Hillier: Recorded vote, please.

Ayes

Hillier.

Nays

Bisson, Brown, Flynn, Jaczek, Kular, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.

Okay, we're in section 15. Before we go on to government motion number 12, just on that issue, before you propose setting that aside, I wanted to remind members that we have your motion, 9.5, that was set aside in an earlier section, and I was wondering when the committee might want to deal with that.

Mr. Gilles Bisson: I think we're waiting for the government to come back with an amendment. That's where we're at with that one. We can probably deal with it on Wednesday, which gives them the chance to come back and think through the amendment so that it does what it is they want in the end, and we can vote on that section.

The Chair (Mr. David Orazietti): Okay, that's fine. I just want to make sure that the committee is clear on who is responsible for bringing back some amendment to this motion.

Mr. Gilles Bisson: Good point, Chair.

The Chair (Mr. David Orazietti): Government side, do you understand the request?

Mr. Gilles Bisson: Government motion 12.

The Chair (Mr. David Orazietti): Thank you, Mr. Bisson.

Mr. Gilles Bisson: I just want to bring the government back to order—Lord, deleterious or what?

Mr. Michael A. Brown: I move that section 35.1 of the Mining Act, as set out in subsection 15(1) of the bill, be amended by adding the following subsection:

“Application to open lands

“(4.1) If mining rights have been deemed withdrawn under subsection (2), a surface rights owner may apply to the minister for an order opening the mining rights for the lands or any part of them for prospecting, staking, sale and lease and the minister may issue the order.”

The Chair (Mr. David Orazietti): Any further comments, Mr. Brown?

Mr. Michael A. Brown: Yes. Sections pertaining to southern Ontario automatic withdrawal of mining rights are to be effective on royal assent. The bill is drafted with a single subsection, 35.1(8), and includes reopening provisions for both southern Ontario and northern Ontario, and the subsection is to come into effect on proclamation, not royal assent. To ensure that the automatic withdrawal scheme for southern Ontario is fully enabled on royal assent including the reopening authority, subsection 35.1(8) had to be divided into two and a new subsection added to the southern Ontario scheme. A subsequent motion deals with the remaining half of subsection 35.1(8) which would cover the reopening process in northern Ontario.

Why does the bill need different provisions to reopen private lands for staking in northern Ontario and southern Ontario, you ask? I knew you were going to ask that. Given that automatic withdrawals will come into force on royal assent, there needs to be a provision in place to reopen those lands if requested by a landowner. The withdrawal of crown mineral rights in northern Ontario is not automatic and is more complex. A separate section dealing with the reopening of private lands withdrawn from staking in northern Ontario could be introduced at a later time. This is basically housekeeping, when it comes right down to it.

1720

Mr. Randy Hillier: Can I make a comment?

The Chair (Mr. David Orazietti): Yes, go ahead, Mr. Hillier.

Mr. Randy Hillier: I'm fully supportive of this motion, but we can see the folly of this. Because we refuse to reunite those mineral rights and surface rights, now we have to make clauses to withdraw the staking, and then we have to make further clauses to re-engage staking. If the mineral rights were complete with the surface rights, then there would be no need for any of those clauses. If an individual landowner chose to allow exploration, they would just do it. So I'll be supporting this, but I think it demonstrates the folly of the process that the government has taken in regard to Bill 173.

Mr. Gilles Bisson: Just quickly, I'll support the amendment, but it already does that under subsection (8) in the bill. In section 15, subsection 35.1(8), it deals with

the process for the application to put them back in. Your argument is that it would not be consistent with the date of proclamation? That's the technical argument?

Mr. Michael A. Brown: It's a timing thing. Yes, it's just technical.

Mr. Gilles Bisson: Okay.

The Chair (Mr. David Orazietti): Anything further?

Mr. Gilles Bisson: Ready to vote.

The Chair (Mr. David Orazietti): Okay. Government motion 12: All those in favour? Opposed? Carried.

Motion 13: Mr. Brown.

Mr. Michael A. Brown: I move that subsection 35.1(8) of the Mining Act, as set out in subsection 15(2) of the bill, be struck out and the following substituted:

"Application to open lands

"(8) If mining rights have been withdrawn by an order under subsection (5), a surface rights owner may apply to the minister for an order opening the mining rights for the lands or any part of them for prospecting, staking, sale and lease and the minister may issue the order."

Interjection: We're only on 13.

Mr. Michael A. Brown: Did I get one ahead of you?

Mr. Gilles Bisson: I don't know what you're—you're way ahead in the bill here.

Mr. Michael A. Brown: I know. I just tore right ahead.

Mr. Gilles Bisson: That was a sneaky move; he was trying to move ahead.

Mr. Michael A. Brown: I was trying very hard.

Mr. Gilles Bisson: That was very stealthy.

Mr. Michael A. Brown: Okay, we'll try it again.

The Chair (Mr. David Orazietti): Go ahead.

Mr. Michael A. Brown: I move that section 35.1 of the Mining Act, as set out in subsection 15(1) of the bill, be amended by adding the following subsections:

"Relief from forfeiture

"(4.2) Subsection (4) does not affect any powers of the recorder or commissioner to grant relief from forfeiture or to make related orders under section 49, or any powers of the minister to revoke, cancel or annul a forfeiture or termination under subsection 185(1).

"Same

"(4.3) Where a recorder or commissioner grants relief from forfeiture under section 49 or where the minister revokes, cancels or annuls a forfeiture or termination under subsection 185(1), the mining rights are no longer deemed withdrawn under subsection (4)."

The Chair (Mr. David Orazietti): Any comments?

Mr. Gilles Bisson: I'd like an explanation, if I could.

Mr. Michael A. Brown: I thought maybe you would. In southern Ontario, where there is a private surface rights holder, the bill proposes automatic withdrawal of mining rights if a mining claim forfeits. This clarifies that existing provisions in the Mining Act for relief from forfeiture would apply. So what it's doing is just clarifying that the provisions that are now present in the Mining Act for relief from forfeiture would apply.

The Chair (Mr. David Orazietti): Go ahead, Mr. Bisson.

Mr. Gilles Bisson: Is that only as in subsection 49(1), where it talks about forfeiture as the result of an administrative error, or in all such conditions?

Mr. Michael A. Brown: Sorry?

Mr. Gilles Bisson: Section 49(1) talks about, "A recorder may by order relieve an unpatented mining claim that is subject to forfeiture as a result of an administrative error...." Right? That's what the current act talks about. It talks about how if there was an administrative error in registering the claim or registering work that was done on the claim etc., it allows you to make it whole once again. So is it only for those cases or all forfeitures of any type?

Ms. Catherine Wyatt: There's a reference to two sections here. One of them is 49, which you've identified as the administrative error provision. But section 185 is a general power for the minister to relieve from forfeiture.

Mr. Gilles Bisson: So how does this amendment treat anything different than in the drafted act? Is there something different in the act as drafted than the current act?

Ms. Catherine Wyatt: It's just an attempt to make clear that for the existing mining claims and leases that are on these lands, they're going to continue—the people will do work and so on on their claims—and that the existing provisions that are in for claims now elsewhere, where if it forfeits you can apply for relief from forfeiture, would be available to those people.

Mr. Gilles Bisson: So that's different from the current act?

Ms. Catherine Wyatt: Well, because there isn't this withdrawal in the current act, yes.

Mr. Gilles Bisson: Okay, gotcha. I understand it now. Thank you.

The Chair (Mr. David Orazietti): Okay. Government motion 13, all those—oh, go ahead, Mr. Hillier.

Mr. Randy Hillier: Just let me see if I can get this squared. For lands in southern Ontario, if the claim is forfeited on lands that have been withdrawn, then they can cancel that forfeiture?

Ms. Catherine Wyatt: The person would have available to them this ability to ask for relief from forfeiture.

Mr. Randy Hillier: Right. And that, again, is only applicable to 15(1), which is southern Ontario lands.

Ms. Catherine Wyatt: It has been added to that because this withdrawal didn't happen before. The act already has these provisions for relief from forfeiture for mining claims, generally speaking, anywhere.

The Chair (Mr. David Orazietti): Any further comments?

Mr. Randy Hillier: Can I have a recorded vote?

Ayes

Brown, Flynn, Jaczek, Kular, Mangat.

Nays

Hillier.

The Chair (Mr. David Orazietti): The motion carries.

Next motion, NDP motion 14. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I may not want to do this. I'm going to withdraw it, period. We've had further conversations on that particular amendment and we decided to withdraw it.

The Chair (Mr. David Orazietti): Government motion 15. Mr. Brown, go ahead.

Mr. Michael A. Brown: I move that subsection 35.1(8) of the Mining Act, as set out in subsection 15(2) of the bill, be struck out and the following substituted:

"Application to open lands

"(8) If mining rights have been withdrawn by an order under subsection (5), a surface rights owner may apply to the minister for an order opening the mining rights for the lands or any part of them for prospecting, staking, sale and lease and the minister may issue the order."

This is a follow-up to motion 12, setting out the re-opening process for northern Ontario only to be effective on proclamation. So we've done it for southern Ontario; this is how it's done in northern Ontario.

Questions?

The Chair (Mr. David Orazietti): Any further comments or questions?

Seeing none, all those in favour of government motion 15? Opposed? The motion is carried.

Conservative motion 15.1. Mr. Hillier, you're up.

1730

Mr. Randy Hillier: I move that subsection 15(2) of the bill be struck out.

The Chair (Mr. David Orazietti): Would you care to elaborate?

Mr. Randy Hillier: Let me just get to it. Excuse me for a moment here.

Subsection 15(2) of the bill states that, "Section 35.1 of the act, as enacted by subsection (1), is amended by adding the following subsections," and those apply to northern Ontario. The intent here is to not have the distinction; that we would treat northern Ontario property owners in the same fashion as southern Ontario property owners, that the lands would be withdrawn and that it not make that distinction between private landowners in southern and northern Ontario. So, repeal that northern Ontario section.

The Chair (Mr. David Orazietti): Mr. Brown, do you want to comment?

Mr. Michael A. Brown: Yes. The bill proposes a different scheme for withdrawing crown mineral rights on private land in northern Ontario. It allows some level of discretion to preserve opportunities for mineral development, particularly in areas with good mineral potential. This recognizes the importance of mining to the economy of northern Ontario and the potential of northern Ontario.

The Chair (Mr. David Orazietti): Any further comment on Conservative motion 15.1? All those in favour?

Mr. Randy Hillier: I'll have a recorded vote.

Ayes

Hillier.

Nays

Brown, Flynn, Kular, Mangat.

The Chair (Mr. David Orazietti): The motion is lost.

On section 15: Shall section 15, as amended, carry? All those in favour? All those opposed? Section 15 is carried, as amended.

Sections 16 and 17: Seeing no amendments, shall sections 16 and 17 carry? All those in favour? Opposed? Sections 16 and 17 are carried.

NDP notice, section 18. Mr. Bisson, would you like to speak to that?

Mr. Gilles Bisson: Yes. Just give me one second here. Where are we at? Excuse me.

The Chair (Mr. David Orazietti): We're at section 18, the NDP notice that has been filed—

Mr. Michael A. Brown: He's going to vote against the section.

Mr. Gilles Bisson: Yes. We're just going to vote against that section. It's pretty simple.

The Chair (Mr. David Orazietti): Okay. Section 18: There are no other amendments proposed. All those in favour of section 18?

Mr. Randy Hillier: Excuse me? Did you say section 18, there's no other amendments?

Mr. Gilles Bisson: We're now getting into the 18 sections.

The Chair (Mr. David Orazietti): Right.

Mr. Gilles Bisson: All that is is just a notification we're going to vote against the section because it deals with the staking issue.

The Chair (Mr. David Orazietti): Just on 18?

Mr. Gilles Bisson: Yeah.

The Chair (Mr. David Orazietti): Mr. Hillier was referring to the next section.

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for.

Ayes

Brown, Flynn, Kular, Mangat.

Nays

Bisson, Hillier.

The Chair (Mr. David Orazietti): Section 18 is carried.

Conservative motion 15.2. Go ahead, Mr. Hillier.

Mr. Randy Hillier: I move that the bill be amended by adding the following section:

“18.1 Section 39 of the act is repealed.”

Mr. Michael A. Brown: I believe it's out of order, Mr. Chair.

The Chair (Mr. David Oraziotti): Yes. Mr. Hillier, I'm informed here that your motion 15.2 is out of order because this section of the bill is not open.

Mr. Randy Hillier: Pardon?

The Chair (Mr. David Oraziotti): This section of the bill is not open, so it's ruled out of order.

There are no proposed amendments in sections 19, 20, 21, 22 and 23. Shall they carry, as is? All those in favour?

Mr. Gilles Bisson: Hang on a sec—whoa, whoa, whoa.

Mr. Randy Hillier: Hold on, hold on.

Mr. Gilles Bisson: You took the brakes off. You were saying section what?

The Chair (Mr. David Oraziotti): Sections 19, 20, 21, 22 and 23. There are no proposed amendments. I assume you're in agreement with them.

Mr. Gilles Bisson: Yes, we are, now that I've looked at my amendments. Thank you.

The Chair (Mr. David Oraziotti): So those sections are carried.

Section 24: Conservative amendment 15.3. Go ahead, Mr. Hillier.

Mr. Randy Hillier: I move that subsections 46.1(1), (2) and (3) of the Mining Act, as set out in section 24 of the bill, be struck out and the following substituted:

“Mining claim where surface rights owner

“46.1(1) If a mining claim is staked on land for which there is a surface rights owner, the licensee shall, within 60 days after making the application to record the mining claim, give confirmation of staking the mining claim to the surface rights owner in the prescribed manner and file proof at the recorder's office that confirmation of staking the mining claim has been given.

“Claim invalid if no confirmation

“(2) If the licensee does not comply with subsection (1), then the mining claim becomes invalid 60 days after the date the application to record is made, even if the claim was recorded.”

The Chair (Mr. David Oraziotti): Any further comments on the proposed motion?

Mr. Randy Hillier: It should be fairly clear here: It's to provide notification, give a reasonable period of time for that notification and, if there is no confirmation, then the claim becomes invalid. If I just go to 46.1, they can “apply to a recorder for an order waiving confirmation” and “a recorder may issue an order waiving confirmation if he or she determines” that that's not feasible.

Claim invalid for one and two—let me just reread this. Excuse me for a minute.

The Chair (Mr. David Oraziotti): Mr. Brown, do you have any response or comments?

Mr. Michael A. Brown: I'm trying to understand the reason for this.

Mr. Randy Hillier: I'm going to withdraw that.

The Chair (Mr. David Oraziotti): The Conservative motion has been withdrawn.

There are no amendments proposed, then, in sections 24, 25 and 26. All those in favour? Okay, carried.

Government motion 16, section 27. Mr. Brown, go ahead.

Mr. Michael A. Brown: I move that section 27 of the bill be amended by adding the following subsection:

“(2) Subsection 49(4) of the act is amended by striking out ‘subsection (1) or (3)’ and substituting ‘subsection (1), (2) or (3).’”

This is basically just a housekeeping amendment.

Mr. Randy Hillier: Just give me a moment here.

Mr. Gilles Bisson: What page is that on in the new book?

Mr. Randy Hillier: Page 11 in the new act.

Mr. Gilles Bisson: Yes, section 27 in the new act, right? Mr. Brown?

Mr. Michael A. Brown: I'm looking; I don't have it out either.

Mr. Gilles Bisson: You're talking about subsection (2) under section 27?

Mr. Michael A. Brown: Yes.

Mr. Gilles Bisson: And you're referring to where it says, “If any part of a claim referred to in subsection (1)—that's where you want this amended? I thought maybe I got a little bit—please help.

The Chair (Mr. David Oraziotti): Ms. Wyatt, go ahead.

Ms. Catherine Wyatt: Yes. It is just a little bit of a technical thing, and it's hard to read back and forth between the bill and what's already in there. What we're proposing to amend here is subsection 49(4), which is the one that says, “An order under subsection (1) or (3) may grant an extension of time.”

Mr. Gilles Bisson: So it's (4)—okay.

Ms. Catherine Wyatt: In the existing act. What's happened is that with the reformatting because of the bill, there are actually three subsections which allow orders to be made here. We just want to make sure we capture all three of those subsections in 49(4).

Mr. Gilles Bisson: Okay. So now it says, “An order under subsection (1) or (3),” and what you're basically adding is (2).

Ms. Catherine Wyatt: There's going to be an order under subsection (2) now, so we want to say “(1), (2) or (3).”

Mr. Gilles Bisson: All right, and that's the (2) that I see here. Okay.

The Chair (Mr. David Oraziotti): Any further comments? Government motion 16: All those in favour?

Mr. Randy Hillier: I'll call for a 20-minute recess, please.

The Chair (Mr. David Oraziotti): Okay. Given that that will take us past the time allocated for today, the committee is adjourned until Wednesday at 4 o'clock to continue with clause-by-clause, and we'll be voting on motion 16 then.

The committee adjourned at 1743.

CONTENTS

Monday 28 September 2009

Mining Amendment Act, 2009, Bill 173, *Mr. Gravelle* / **Loi de 2009 modifiant la Loi
sur les mines, projet de loi 173, *M. Gravelle*..... G-1053**

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Orazietti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Laurel C. Broten (Etobicoke–Lakeshore L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. David Orazietti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L) Mr. Kevin Daniel Flynn (Oakville L)

Mr. Kevin Daniel Flynn (Oakville L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Also taking part / Autres participants et participantes

Ms. Catherine Wyatt, legal counsel,

Ministry of Northern Development, Mines and Forestry

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Catherine Oh, legislative counsel



Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 30 September 2009

Journal des débats (Hansard)

Mercredi 30 septembre 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant
la Loi sur les mines

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 30 September 2009

Mercredi 30 septembre 2009

The committee met at 1604 in room 228.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Oraziotti): Okay, members. We're back to clause-by-clause consideration of Bill 173. Last day, we left off at government motion number 16. A recorded vote was called for. Government motion 16 is on the floor.

Ayes

Albanese, Bisson, Brown, Kular, Mangat.

The Chair (Mr. David Oraziotti): All those opposed? The motion is carried.

Those are all the amendments for section 27. So shall section 27, as amended, carry? All those in favour? Opposed? Carried.

Section 28, Conservative motion 16.1. Mr. Hillier, go ahead.

Mr. Randy Hillier: Can I just take a moment here? I think we may have an error on our numbers.

Mr. Gilles Bisson: We're on 16.

The Chair (Mr. David Oraziotti): Correct. Section 28; in your package, motion 16.1

Mr. Randy Hillier: I don't see section 28 in the—

Mr. Gilles Bisson: It's—what are you talking about? You need to look at the act, section 50, right?

Mr. Randy Hillier: Yes.

Mr. Gilles Bisson: In the old act, section 50 is what you're looking for. I take it what you're doing here, Mr. Hillier, is making it clear and explicit that you can't enter the land without permission. That's what you're up to here, right?

Mr. Randy Hillier: It looks like it. But I'm just saying I can't see 28.2 in Bill 173.

Mr. Gilles Bisson: Yes, it's there on page 11.

Mr. Randy Hillier: Page 11?

Mr. Gilles Bisson: Subsection 50 of the act is amended by adding the following section—

Mr. Randy Hillier: Oh, yes. Okay. Now I'm on the right page.

The Chair (Mr. David Oraziotti): No problem.

Mr. Randy Hillier: I move that subsection 28(2) of the bill be struck out and the following substituted:

"(2) Section 50 of the act is amended by adding the following subsections:

"Exploration work

"(2.1) Despite subsection (2), the holder of a mining claim shall not enter upon, use or occupy any part of a mining claim for any exploration work on the claim unless the requirements in sections 78.1 and 78.2 and in the regulations have been met.

"Private land

"(2.2) Despite anything in this or any other act, neither the holder of a mining claim, nor the operator of a mine nor any other person, can acquire any right to use any private land without the express consent of the landowner."

That's the big change in (2.2), and I think it should be fairly clear to everyone what the intent is. It gives the same right to all landowners as we approved for the Ontario Northland commission earlier in the committee clause-by-clause. It requires consent for any exploration work on private land.

1610

The Chair (Mr. David Oraziotti): Any further comments? Mr. Brown, do you care to respond?

Mr. Michael A. Brown: We can't support this. If the intent is to deal with privately patented lands, this motion is not necessary. If it's about private surface right owners, Bill 173's scheme for the withdrawal of private lands from staking protects these lands from new staking, or Bill 173 would require exploration plans and permits for existing mineral exploration on claims and leases. There would be notice provisions for private surface owners and rehabilitation requirements and terms and conditions in exploration permits could be tailored to address specific concerns of surface owners. So we can't support this. It is dealt with already.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Gilles Bisson: Clearly, what we heard in committee—I'm not going to go through all the various presentations—was a fairly strong sentiment, both within northern and southern Ontario, for people who own private property, and we're not just talking about those

who have crown mining rights but people who own their own mining rights—that there were a couple of bad apples in the bunch. First of all, I want to say that the majority of prospectors and people in the exploration industry normally will approach somebody and give proper notice, as they are required to under section 78 of the bill, and then they'll go in and make an agreement and then they will work with that agreement.

I think Mr. Hillier is trying to do something similar to what we're trying to do in one of our later amendments, to make it clear that you need to have permission so that you lock in that there needs to be an agreement of some type.

Now, my question is to counsel from the ministry, unless you, Mr. Brown, know the answer; you might and you can answer it. Is there any regulation further to the act that requires that—because under section 78 it does say that you have to provide notice if you're going to do any kind of exploration work. But does notice require an agreement under any section or regulation of the current act? I believe it does. That's what I'm not sure of.

Mr. Michael A. Brown: If Ms. Wyatt will help us.

Mr. Gilles Bisson: You may as well stay there because we're just going to keep on calling you back.

Ms. Catherine Wyatt: I get my exercise this way.

The Chair (Mr. David Orazietti): Good afternoon. Thanks for being here today.

Ms. Catherine Wyatt: We're referring to the current bill, and you have pointed out section 78, which is—

Mr. Gilles Bisson: Yes, 78 says you must give notice; right?

Ms. Catherine Wyatt: Right. That's the notice of intention to do ground exploration work we have now.

Mr. Gilles Bisson: Yes.

Ms. Catherine Wyatt: So having given that notice—what you may be thinking about is that if you go to lease, you've got to have a specific agreement with the surface rights owner. You can lease the mining rights, but just to do the exploration work, you have to give the appropriate notice.

Mr. Gilles Bisson: So you only have to give notice; you don't have to have an agreement, then? Even though most people get an agreement—

Ms. Catherine Wyatt: It makes sense to get an agreement, practically speaking, because you're going to be liable if you do anything.

Mr. Gilles Bisson: Okay. If that's the case—I was under the impression that you had to get the agreement. If you don't, I think this amendment makes some sense.

Does this present any kind of problem, the way that it's written currently, what's being suggested under (2.2)? It seems to me it's a pretty straightforward amendment. If under section 78 you have to have notice, this says that you have to have agreement.

Ms. Catherine Wyatt: The section of the bill we're talking about here has nothing to do with notice. It has to do with what rights come with a mining claim. So section 50 now sets out what rights the mining claim holder has.

Mr. Gilles Bisson: Yes.

Ms. Catherine Wyatt: And this is basically saying that unlike the way the act reads now—let's just take a look at that. Basically now, it gives the claim holder not title but the right to go on the land and carry out the work that needs to be done in order to keep the claim in good standing and to apply for a lease, if that comes along. I'm just looking at section 50 of the act as it exists now, which talks about the rights in claim, which is the section that is being changed here or proposed to be changed. So 50(1) talks about no right, title or interest but the right to work on the land, as is required under the act, to proceed toward a lease.

Subsection (2) talks about the surface rights, and the bill has changed this to say it's subject to the requirements of getting an exploration plan or permit where that's required. But it does give you the right to go on the land to do those things.

Mr. Gilles Bisson: Yes, but without an agreement.

Ms. Catherine Wyatt: So what I understand (2.2) to be saying—first of all, it talks about private land, so clearly if it's privately patented land where you own the surface and mining rights, that can't be staked and somebody can't go explore on it without your permission.

If you're talking about private surface rights with crown mineral rights, then this seems to be taking away not anything to do with notice or anything to do with consent to explore but any right to actually do anything on the surface, as I read it. But if that's not your intent—

Mr. Randy Hillier: Let me just be clear here: It says that on private land, "Despite anything" else in this act, "neither the holder of a mining claim, nor the operator of a mine nor any other person, can acquire any right to use any private land without the express consent" of the owner.

Mr. Gilles Bisson: That's what section—78? What are you reading there?

Mr. Randy Hillier: That's on the amendment on private land.

Mr. Gilles Bisson: Oh, okay.

Mr. Randy Hillier: Section 50 of the present act talks about the rights of a licensee, and it says that—again, if we look at the surface rights, 50(2): "The holder of a mining claim does not have any right, title or claim to the surface rights ... other than the right to enter upon, use and occupy such part or parts thereof as are necessary for the purpose of prospecting" And we make reference to the earlier section that says you need to have notification—that's in 78(1) and 78(2)—and now we're saying in addition to notification, there's also agreement.

Ms. Catherine Wyatt: Subsection (2.1) in the bill, which amends the current—

Mr. Randy Hillier: It's exploration work. It's the same wording in my amendment for (2.1) as in the bill.

Ms. Catherine Wyatt: So where the act now says that the holder has no right and title but the ability to go onto the land and use it for prospecting, this (2.1) is now going to make those lands subject to the new scheme, the new graduated regulatory scheme, for exploration, which is going to be the plans and permits, which we don't have

now. So that's being brought into what the claim holder can do on the claim, and any right to explore on those lands is subject to that plans and permits scheme as well.

I just would like to be clear, though, when you're talking about private land, what you intended by that.

Mr. Randy Hillier: Private land is land that is patented to an individual or a business that holds title to that land.

Ms. Catherine Wyatt: But in any event, you couldn't stake on those lands without permission, as I understand it.

Mr. Randy Hillier: Yes, because we—

Mr. Gilles Bisson: That was my question.

Mr. Randy Hillier: No, there are people who have private land, who have title to the land, but the crown retains mineral rights.

Ms. Catherine Wyatt: That's what I was trying to make clear. Okay.

Mr. Gilles Bisson: Can I ask a quick question? I know where you're going, but if it's private land and the person, not the crown, owns the mineral rights, where in the act does it say that you can't get access without agreement? Because section 78 deals with just the mining claim. You said earlier if it's private land, they can't get access unless they have agreement.

Ms. Catherine Wyatt: You can't stake it.

Mr. Gilles Bisson: That's right, and where is that in the act?

Ms. Catherine Wyatt: You can't get the mining rights to it. You have to go back to what's open for staking and what's crown land and so on.

Mr. Gilles Bisson: That's earlier in the act. Okay, so I trust you. So if it's private land, I can't stake without having permission.

Ms. Catherine Wyatt: Yes, because they're not the crown's mining rights any more. They belong to a private person. If you want to deal with their land, and they're a private owner—

Mr. Gilles Bisson: Yes, but if it's crown, that speaks to your issue. Got you, okay.

Ms. Catherine Wyatt: That does speak to that.

Mr. Gilles Bisson: That's why you're saying—ah, I get the argument now. Okay.

Ms. Catherine Wyatt: Right.

Mr. Randy Hillier: So this puts all surface rights owners on the same playing field. If they own their mineral rights and they want to lease them out or allow exploration, it requires consent of that private land owner if they own the mineral rights. If the crown owns the mineral rights, the same thing would apply: It requires the consent of the owner of the land.

1620

Mr. Gilles Bisson: So maybe what you need is an amendment to your amendment that makes it clear that we're talking about private land where the crown owns the mineral rights, which is northern Ontario, because it won't count in southern Ontario because we've taken all those away. I'd support that.

Interjection.

Mr. Gilles Bisson: So my question to the parliamentary assistant—because the argument here is that we're mixing apples and oranges, easily said. If we just clarify, what Mr. Hillier was talking about is private land to which the crown owns the rights, that it makes it clear it doesn't interfere with the private lands where you outright own the mining rights. It would only deal with private lands where the crown owns the rights. Would that be supportable? And if not, why?

Mr. Michael A. Brown: I've lost what we're trying to achieve here.

Mr. Randy Hillier: Protection and equality.

Mr. Michael A. Brown: Protection—

Mr. Gilles Bisson: Well, I think what we heard was—for example, in Thunder Bay, what was the name of the people—Shebandowan Lake or something like that? I forget the name of it. They made the point that they have private land to which the crown owns the rights. They wake up in the morning and there's somebody in there doing some exploration. It's not a nice thing to have if you're waking up on Monday morning at the cottage on your holidays and you've got somebody with a diamond drill in your backyard. I'm being a little bit facetious, but you know where I'm going, Mr. Brown.

The point is to try and capture that type of complaint that we heard through the committee hearings, which are, some people down your way—which has now been fixed because you're withdrawing the crown mining rights from southern Ontario. But for northern Ontario, to make sure that if there are crown mining rights to which there are private lands tied to it, you would have to have agreement, just as you do with private land where the person owns the mining rights. It would just make it consistent.

Mr. Randy Hillier: Maybe I can put it this way: This is exactly the same thing as what the government side argued for in favour of the Ontario Northland commission. In that argument, the government side argued that Ontario Northland must have final say on what happens on their property, even though the crown has title to it.

Mr. Gilles Bisson: And the same thing at other lands—

Mr. Randy Hillier: So this is the same argument. Why is it important for Ontario Northland to have final say on what happens on their properties? The same argument applies to an individual landowner. There needs to be consent before others enter upon and explore and do work on their properties.

Mr. Michael A. Brown: First of all, it would be quite possible to stake a claim on the property without ever setting foot on it.

Mr. Randy Hillier: Say that again.

Mr. Gilles Bisson: Under map staking.

Mr. Michael A. Brown: Under map staking, it would be quite possible to stake a claim without ever setting foot on it. There's no requirement that—

Mr. Randy Hillier: Well, that's a bit of a red herring.

Mr. Michael A. Brown: No, it isn't.

Mr. Randy Hillier: We're not talking about map staking here.

Mr. Michael A. Brown: We're talking staking though, aren't we?

Mr. Randy Hillier: We're talking about the rights of the licensee.

Ms. Catherine Wyatt: You're actually talking about the right of the licensee once the mining claim already exists in this section. So it has already been staked.

Mr. Gilles Bisson: Yes.

Mr. Michael A. Brown: It has already been staked.

Ms. Catherine Wyatt: So this is about exploration, presumably.

Mr. Gilles Bisson: Exactly. That's why I said it prevents you from putting a diamond drill in somebody's backyard. That's what I was getting at. Obviously, you can't do that if you haven't staked.

The argument is, we've already, in the bill, in the current act, spelled out that there's a whole bunch of places where you cannot do mining exploration without permission—a whole bunch of places: ONTC lands, certain lands within municipalities, railways, all that kind of stuff. It just brings private lands which crown mining rights are associated with in line with everything else. That's the way I see it. If I'm in northern Ontario and I own private land and somebody wants to come and do some exploration, I've got to be sort of saying, "Yeah, let's sign a deal," right?

Because if I've got private land, they would have to come and do it anyway—if I had private mining rights. If I own the mining rights on my private land, you've got to come and make a deal with me to do exploration, so why not make it the same for the crown? I guess that's the easiest way to put it for crown mining rights.

It has been one of the big complaints. There are really about three or four big issues that we heard through the committee hearings. This is one of them. That's why we're spending a bit of time trying to rattle this one down, because what we've heard from all kinds of people was that there are cases where exploration companies have accessed lands that are owned privately by an individual, and they didn't have a say about what was going to happen on their own land because the crown owned the mining rights and, quite frankly, as long as the person gives notice, they can be there. But if I own the private land and I own the mining rights, you can't do that. So it's just to make it consistent. I think it's a reasonable amendment, similar to something we wanted to do.

The Chair (Mr. David Orazietti): Any further comments from the government side, or do you want to add anything further on this, Ms. Wyatt? I understand the government's position, Mr. Brown, as you've made clear. Is there anything else you want to add?

Mr. Michael A. Brown: I think our position is clear on this, and we don't see that this is helpful.

Mr. Gilles Bisson: Which way would it not be helpful? How would it not be helpful?

Mr. Randy Hillier: Let me just—obviously, the government's position is not clear. The other day, you argued in favour of requiring permission and consent for people to explore on ONTC lands, right?

Mr. Michael A. Brown: We did.

Mr. Randy Hillier: So that corporation has certain protections, and that's what you argued in favour of, right?

Mr. Michael A. Brown: Yes.

Mr. Randy Hillier: This gives the same protection to any other corporation or any individual to the same extent that you argued for ONTC. So if you're not in support of this, your position is not clear—your position is contradictory—unless you're suggesting to everybody in this province that ONTC is a more valuable entity than people and more valuable than individuals.

Mr. Michael A. Brown: What we would suggest, in respect to ONTC, is that the section of the act that we are talking about is a reflection of the ONTC Act; that the two acts need to be consistent.

The ONTC has had this provision in the Mining Act for over 100 years, dating back to the days of the ONTC's predecessor, Temiskaming and Northern Ontario Railway, which was created by statute in 1902. So in the case of ONTC, the government is merely reiterating a section of the ONTC Act and the present Mining Act, which we're amending today, so that it remains consistent. There is no change. That's why the ONTC section is there: just to make sure we remain consistent between the two acts.

Mr. Randy Hillier: Well, I would say to you that the only thing that is consistent is the inequality in the application of law in your argument. You are giving—and you have given and granted—ONTC a privileged status that no one else enjoys. No one, no other company in northern Ontario or no other individual in northern Ontario would enjoy the level of protection and the equality of law that ONTC does, as prescribed under this act.

Mr. Michael A. Brown: Just to be helpful, the Temiskaming and Northern Ontario Railway Act vested certain lands for the railway in the railway commission as a trustee for Ontario. That act was amended in 1906 to say that the commission could deal with minerals and mining rights for any of these vested lands. The ONTC inherited that authority from the railway. The Mining Act provides that the commission has the authority to consent to mining claims on its vested lands consistent with this authority.

As to the proposal to enact a more general provision requiring the consent of any public or private land owner prior to the recording of the claim, it is our view that Bill 173 provides a comprehensive scheme to address land-owner issues. Section 35.1 provides for the withdrawal of lands from staking where there is a private surface owner. Sections 29 and 30, as amended by Bill 173, would provide for the protection of various private and public lands from staking without the minister's consent. The general withdrawal provision under section 35

remains available to deal with other circumstances that may arise. Once staked, claims cannot be worked without an exploration plan or permit, which provides a further opportunity for landowners to work with claim holders to address concerns they may have about activities on their land. For these reasons, we are not supporting your amendment.

1630

Mr. Randy Hillier: You just stated that in 1906, the forerunner of ONTC was granted protection by statute for the ONTC to determine if there would be mineral exploration on their lands. The owner of those lands, ONTC, would have to consent. This act continues with ensuring and protecting that consent. How can you argue that that same consent is not valid or applicable to private landowners in the north?

This amendment ensures that private landowners give consent before work happens on their properties. You've argued that it's most important that ONTC have it. How can you tell the people in this province that they are second-rate, and every business and every private landowner is second-rate in your view, when it comes to ONTC? How?

Mr. Michael A. Brown: That is clearly not the case. As I pointed out, private landowners have a series of rights in sections 29 and 30 and in section 35.1. What we're talking about is a historical situation with the ONTC. I will tell the member that there would be similar sections for other railways in particular, probably through the federal acts that established the CPR, the CNR and all the various railroads that come through. There are differences, but railroads are different than other—

Mr. Randy Hillier: It's a crown corporation.

Mr. Michael A. Brown: Yes, it is.

Mr. Randy Hillier: That's all it is. It has no greater standing than any other crown corporation or any other corporation or any individual. You're telling me that we will have rankings in law of who is important and who is less important—that's what you're saying. And you're saying that because it's a historical fact—I would say to you that there's been a historical injustice—this government is not prepared yet to fix that historical injustice. They're prepared to let it remain under Bill 173, but make sure that their crown corporations have favoured status in law. You argued just the other day, and now you're arguing that black is white and white is black.

Mr. Michael A. Brown: I don't know what to say. I don't agree with you.

Mr. Randy Hillier: Well, do you know what? If I was in your position, I wouldn't know what to say either. How could I say anything to justify a contradiction? How could I say anything that would justify the hypocrisy of Bill 173 when it comes to private landowners and crown corporations? I would be struck soundless as well.

The Chair (Mr. David Orazietti): Anything else to add?

Mr. Gilles Bisson: To the parliamentary assistant, just to be clear on something myself: My understanding is that the current act says that if I'm an explorationist and

I'm trying to access private lands to which the landowner owns the mineral rights, I need to get permission to be able to access those lands in order to be able to do exploration. That's what the current act says. Right?

Ms. Catherine Wyatt: To me? Sorry.

Mr. Gilles Bisson: Either one; doesn't matter.

Mr. Michael A. Brown: Try it again.

Mr. Gilles Bisson: If I own property and I own the mineral rights and you're the explorationist, you need to get my permission to come onto the property.

Mr. Michael A. Brown: Of course you do.

Mr. Gilles Bisson: Yes. So I would only end on this point before we go to the vote: Why wouldn't we do the same for somebody who owns private property to which the crown owns the mineral rights? It's still the same concept of a property owner's rights to the access and fair use of their property.

Now, is there an argument against it as far as access by the mining companies? Is there a fear that this would lead to a whole bunch of land not being available for exploration? Is that what the logic here is? I'm trying to figure out why you're saying no. Like, is there an argument to be made that if you did so, it would mean to say that a whole bunch of land would not be available to the mining industry for exploration? Is that the fear? That's the only reason I would think that you would say no.

Mr. Michael A. Brown: Well, part of the object of the Mining Act is to promote mining in Ontario, to provide the province and its people with the revenues, the jobs and the economy that you get when you have mines. If the crown owns the rights, it would seem to me that we have sections in this act which look after the private landowner, but that we want to encourage people, if we can, to prospect not just on the crown lands, but in northern Ontario on private lands.

If I'm a private landowner in northern Ontario, which I happen to be; I do happen to own my own—

Mr. Gilles Bisson: You what?

Mr. Michael A. Brown: I happen to own my own mineral rights.

Mr. Gilles Bisson: Yes, okay. That's fair. So do I.

Mr. Michael A. Brown: Most people do. I think that I would appreciate the opportunity of knowing if someone thinks there's some value there.

Mr. Gilles Bisson: Exactly. Agreed.

Mr. Michael A. Brown: So I don't really understand why we would want to do anything else.

Mr. Gilles Bisson: Well, no, that's exactly the argument, Mr. Brown. I don't want to slow this down. This is not about trying to slow this down. I'm just trying to make the point that—you and I both own property in northern Ontario. As you, I own my mineral rights. Nobody can come on my property and do exploration without my consent, period.

If you happen to buy a piece of property to which you no longer own the mining rights but it's the crown's, you could be in a situation where an explorationist would come onto your property and start to do exploration without your permission. So why wouldn't we give all

property owners the same type of protection? That's why I raised with Mr. Hillier that if the ministry feels that using the words "use any private land" is not explicit enough and we need to talk about private land to which the mining rights are owned by the crown, I'm fine with that. My argument is, we should treat property owners fairly no matter what.

That's why I ask the second question: Is there a reason why we don't want to do this? If we were not to give exploration companies the ability to get free access to private land, does that mean to say that somehow or other we would lose a whole bunch of opportunity for exploration? Because I don't know too many explorationists who wouldn't get permission. As a matter of fact, I don't know any.

Mr. Michael A. Brown: Claims, once staked, cannot be worked without an exploration plan or permit, which provides a further opportunity for landowners to—

Mr. Gilles Bisson: That's true, unless the crown owns the mining rights. If the crown owns the mining rights, once the claim is staked, by map or whatever, an exploration could—all they have to do is give notice to get onto that land. That's all they've got to do.

Ms. Catherine Wyatt: That's in the current act.

Mr. Gilles Bisson: That's right.

Ms. Catherine Wyatt: That's not what the bill says. The bill is bringing in the exploration plan and permit process, which will apply to crown mining rights where there's a mining stake.

Mr. Gilles Bisson: Okay, well, that's why I asked the question at the beginning of this. Now we're back at the beginning.

Ms. Catherine Wyatt: Yes. I thought we were getting a little confused with respect to the private property person who owns surface and mining rights and no one can explore on their land without their permission. But clearly they can't, because they won't have a mining claim on your land because they can't stake it because it's privately owned. There are no crown mineral rights, right? So that's completely separate.

1640

Mr. Gilles Bisson: That was not the argument. We're talking about people with crown—we're talking about people who have private land to which the crown owns the mining rights.

Ms. Catherine Wyatt: Yes. You were comparing private property owners to people with the crown and saying it was essentially the same.

Mr. Gilles Bisson: I'm saying, if I'm a private property owner, nobody can get access to my land. So you're now saying that under the new scheme, if I own property to which the crown owns the mineral rights—you're going to have to get permission, you're saying, under the new act?

Ms. Catherine Wyatt: What you're going to have to do is comply with the scheme that requires you to either file an exploration plan or get an exploration permit for most exploration activity.

Mr. Gilles Bisson: A follow-up question: Does the exploration plan or permit require permission from the private property owner?

Ms. Catherine Wyatt: Right now, all we've done is enable that process, and the details were to be worked out in regulations. That is something that we'd be consulting with folks on, as to how best to deal with that.

Mr. Gilles Bisson: So it's not explicit in the act, then?

Ms. Catherine Wyatt: No.

Mr. Gilles Bisson: So we're back to the main argument. If it is the intent of the government to protect private property owners by having this scheme where you have to get an exploration permit to be able to get access to do exploration—which is fine—why wouldn't we just clarify in the act, "You can't get access to private property to do exploration unless you have permission"? Because, it is the case, where I own the mining rights now—Mr. Brown and I are protected. Maybe Laura, if you bought some property now, maybe you wouldn't be protected.

So I ask: Will you agree to some form of amendment that would allow us to treat all private property owners the same so that they're protected? You cannot access that land for exploration unless you have permission. That's the question—yes or no—and then we'll move on. Is there a reason why we can't do that?

Mr. Michael A. Brown: We think their interests, at this point, will be well protected and that they will, through filing an exploration plan or re-obtaining a permit, they will obviously—I don't really know what we're gaining either way, and we believe that this is the correct way to treat this. It provides for some flexibility as we look for ways to have exploration activity with landowner knowledge—

Mr. Gilles Bisson: Knowledge, but not permission—that's the problem.

Mr. Randy Hillier: I find this really interesting that you're suggesting that this scheme of plans and permits will limit or would afford private landowners some level of protection, but it wasn't enough protection for the ONTC; there you made it explicit, right?

This bill is to promote mining in this province, and I would add, it is also the significant intent of this bill to end conflicts with mining in this province, so that mining can indeed continue on in a vigorous and robust fashion. We're seeing here that you're still allowing conflicts to be created because you are not requiring consent for private landowners where the crown retains mineral ownership. You're putting some groups, like the ONTC, off limits and giving them significant safeguards, you're giving a number of other safeguards for municipalities and cemeteries and a host of individuals or corporations, but you will not extend or apply those safeguards to everyone. What we're talking about here—let's be very clear: There's 0.4% of private land that falls in this category in northern Ontario—

Mr. Gilles Bisson: Yeah—you're right.

Mr. Randy Hillier: So we're not talking about a huge land mass. We're certainly not talking anywhere near the 42% of the province—

Mr. Gilles Bisson: The 0.4% percent in northern Ontario is pretty big; that's all I've got to say.

Mr. Randy Hillier: Sorry, 0.4% of private land, Mr. Bisson, not 4% of the total land mass.

Mr. Gilles Bisson: I'm supporting your argument.

Mr. Randy Hillier: I just want to be clear here that this is 0.4% of the private lands, far less than the 42% of the province that the government is proposing to take off limits from mining exploration under Bill 191.

Mr. Gilles Bisson: I think we have some movement here, so why don't we hear from the parliamentary assistant? Do we have movement?

Mr. Michael A. Brown: In southern Ontario, all mining rights are withdrawn. Staking rights are withdrawn, so it's not an issue, I don't think. In northern Ontario, I would suggest, though—and you might want to mull this over for a second—that if it requires absolute permission, regardless of the reasonableness of the scheme or the plan, whatever you want to call it, you may be essentially ceding the mineral claim to the landowner because he can just refuse and then take your claim. I don't think that would be in the interest of the industry or of the province of Ontario and would inhibit, I think, some legitimate prospecting and development opportunities in northern Ontario.

Mr. Gilles Bisson: That's why I posed the question the way I did a little while ago. I said, is there some reason why you think we should not grant absolute not just notification but permission to property owners that have crown mining rights, and you've just given an explanation that no, you think it will withdraw from the mining inventory—

Mr. Michael A. Brown: I'm just asking that you consider that. I think it's one of the considerations you might have.

Mr. Gilles Bisson: I ask myself the same question, because as I looked at the amendment and at the section I thought, if I'm the crown, do I really want to do this, because will I in fact be ceding my mineral rights? I understand your argument. But then I say to myself, back to the argument that Mr. Hillier makes, if it is currently the rule with 99% of private lands in northern Ontario having the mineral rights associated with them, it's not a big stretch to get the other 1% in. If it was the other way around, if the crown owned 99% of the mineral rights under private land, I think that argument has some validity. But we're looking at less than two per cent of private lands in northern Ontario to which the crown owns the mineral rights.

Mr. Michael A. Brown: It seems to us that if you're a private landowner in northern Ontario and you are concerned that someone may wish to have some kind of mining activity on your property, staking and then going through the process, what you should do is go to the ministry and ask for the crown's mining rights to be withdrawn or the staking rights to be withdrawn. That's

what the remedy should be and that seems to make sense to me.

Mr. Gilles Bisson: You could do that, but it's not guaranteed that you would get the mining rights, right? To be clear, there's no guarantee that I would. So all of a sudden somebody takes interest and I own 30 acres up in Kamiskotia Lake, let's say, and I don't own the mineral rights—they're owned by the crown—there's no guarantee that if I apply to get those mineral rights, I'm going to get them. That's the problem. What we heard in Thunder Bay—what's the name of the lake again, Mr. Chair? You'd know better than I do. It's in your neck of the woods. What was it again?

The Chair (Mr. David Orazietti): I wasn't with committee—

Mr. Michael A. Brown: Wasn't it Shuniah?

Mr. Gilles Bisson: Oh, excuse me. It was Mr. Mauro. My mistake.

Mr. Michael A. Brown: Shuniah?

Mr. Gilles Bisson: Something like that. There were the people up in Thunder Bay and that was their issue. There were crown mining rights under their land.

Mr. Michael A. Brown: But if I recall, the representative of the community, once they were told that they would have the ability to ask for withdrawal, were not terribly unhappy with the situation.

Mr. Randy Hillier: So let me say this: If it is indeed the crown's intention to exercise that, should people request that the crown would withdraw, then why not just include it in the act that they are withdrawn?

Mr. Michael A. Brown: I'm suggesting to you that the crown has an interest and the people of Ontario have an interest, and so does the north have an interest, in seeing that if there is significant mineral content on those lands, the minister may decide that he wouldn't withdraw. I think that would be a remote possibility, but it is a possibility. I think the people of Ontario, particularly the people where I live, would want that to remain the same, that there is some discretion, that the minister could decide, if there was a huge possibility or a strong possibility that there are minerals to be found there and that they could be brought to market economically and provide jobs and opportunity for the communities of northern Ontario. They would want the minister to have the discretion that he has under the way we have the act organized at present. And it is different in northern Ontario.

Mr. Randy Hillier: I would say to you two things. First off, in my amendment, I used the word "consent"; you used the words "absolute permission." I don't know if there's anything other than absolute permission—permission is absolute. But I will say that if indeed you're about the rights in northern Ontario, I would suggest to the government that individual landowners, private landowners, where the crown retains the mineral rights at the present time—if the crown was really interested in finding minerals and bringing them to market, there would be no faster or better way to do it than to put those mineral rights back with those private landowners so that

there is an incentive for them to do the exploration on their own lands.

Mr. Michael A. Brown: I think we've had that debate.

Mr. Gilles Bisson: Oh, I hear you. Just for the record, the municipality that was before us, Shuniah—and I'm not pronouncing it well. It was Maria Harding, the reeve, who brought that point to us. It's a good thing that I have my notes.

The Chair (Mr. David Oraziotti): Okay. I think we've heard the comments on this motion. I don't see any further comments. Conservative motion 16.1: We'll vote on this.

Mr. Randy Hillier: I'll ask for a recorded vote—

The Chair (Mr. David Oraziotti): Okay, a recorded vote's been called for.

Mr. Randy Hillier: —and a 20-minute recess.

The Chair (Mr. David Oraziotti): A 20-minute recess. I'd ask members to be back at 5:09.

The committee recessed from 1649 to 1709.

The Chair (Mr. David Oraziotti): Committee members, we have a motion in front of us: 16.1, a Conservative motion. A recorded vote has been asked for.

Ayes

Bisson, Hillier.

Nays

Brown, Kular, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Conservative motion 16.2—actually, one minute here: section 28. There are no other amendments in section 28, so shall section 28 carry? All those in favour? All those opposed? Section 28 is carried.

Section 29, Conservative motion 16.2. Mr. Hillier, go ahead.

Mr. Randy Hillier: I move that subsection 29(1) of the bill be struck out and the following substituted:

“(1) Subsection 51(1) of the act is repealed and the following substituted:

“‘Surface rights on unpatented mining claim

“(1) The holder of an unpatented mining claim has no right to the use of the surface rights except as permitted under this act.”

Before I go any further, I would like to ask ministry staff for some clarification on a point here. My question is on unpatented mining claims; that's what section 51 refers to. Clearly, unpatented mining claims, in a broad sense, is crown land. But my question is, are there any types of land other than crown land where an unpatented mining claim could be recorded?

Ms. Catherine Wyatt: I can't think of it, no. because a mining claim is one that's staked on crown mining rights.

Mr. Randy Hillier: But this is—and my question is, when I read the definition of unpatented claims back at

the beginning of the act, it's not just the crown mineral rights. I'll read the definition.

“‘Unpatented,’ when referring to land or mining rights”—in section 51 it says “unpatented mining claim.” That's the heading for it. In the definition it says, “‘unpatented,’ when referring to land or mining rights means land or mining rights for which a patent, lease, licence of occupation or any other form of crown grant is not in effect.” Because we've got some slightly—in the definition, it doesn't use the words “mining claim,” but in section 51, it refers to unpatented mining claims. I'm wondering if there is any difference.

Ms. Catherine Wyatt: No. I have occasionally found the use of the term “unpatented mining claim” a bit confusing myself, but my understanding is that it is intended here to distinguish it from the case where a mining claim has proceeded on to a lease or, in the old days, a patent. Sometimes they would refer to it as a patent of a claim when they actually were referring to something different. So the unpatented mining claim is a claim that's neither a lease nor a patent, but it's a claim that has been staked out along available crown land.

Mr. Randy Hillier: Okay, so could—

Ms. Catherine Wyatt: So “unpatented” has its own definition for some reason, and that's getting a bit confusing, because there are other forms of tenure that might be considered different. But an unpatented mining claim is—

Mr. Randy Hillier: I guess my question is, can you have an unpatented claim on private property, where there is an owner of surface rights but the crown owns the mineral rights? Would that be an unpatented claim?

Ms. Catherine Wyatt: Yes.

Mr. Randy Hillier: It would be.

Ms. Catherine Wyatt: Yes. In fact, all mining claims are really unpatented, so that's why it gets confusing when you read the act. If it's not an unpatented mining claim—I mean, that is what a mining claim is.

Mr. Randy Hillier: Okay.

Ms. Catherine Wyatt: If it's patented, then they're usually referring to either a mining lease or patented mining lands that have come as a grant.

Mr. Randy Hillier: So what would be a—see, when I read this, “‘patent’ means a grant from the crown in fee simple or for a less estate made under the Great Seal, and includes leasehold patents and freehold patents.” My reading of that is that patent grants—if it was a patented claim, then it would be on land that is owned by others.

Ms. Catherine Wyatt: Well, that's why we don't say “patented claim.” A mining claim is unpatented.

Mr. Randy Hillier: Right.

Ms. Catherine Wyatt: If they're talking about patented land, it gets really confusing. Then it can either mean a leasehold patent, which would be a mining lease, or a crown patent sort of patent, which is your typical crown grant of fee simple. So if we're talking an unpatented mining claim, we're talking a mining claim that has been staked out in accordance with the act on land that was open for staking, which is crown mineral rights.

Mr. Randy Hillier: Well, it's unfortunate I didn't get a different answer, because if I got a different answer, then I could have maybe withdrawn this, but—

Ms. Catherine Wyatt: Oh, I thought you were going in that direction.

Mr. Randy Hillier: Well, I was. If “unpatented” could only be applicable to crown ownership of—but I understand now. It applies to crown ownership of minerals.

Well, maybe this will clear it up—

Ms. Catherine Wyatt: Okay.

Mr. Randy Hillier: I'll ask you this question: If I, as the owner of the mineral rights on my land, seek to do exploration work and extract minerals from my lands, what sort of permit would I have to get under the new act?

Ms. Catherine Wyatt: Well, you wouldn't be covered by a claim because you own those lands.

Mr. Randy Hillier: Yes. I would still have to get—

Ms. Catherine Wyatt: You would have to go to whatever other ministries might require you to—MNR, MOE.

Mr. Randy Hillier: But there would be nothing from MNDM for me to extract the minerals out of my own properties?

Ms. Catherine Wyatt: No.

Mr. Randy Hillier: Okay. Thank you very much for your clarification.

The Chair (Mr. David Orazietti): Any further comments?

Mr. Randy Hillier: Well, I'll just explain here a little bit. This is section 51, “Surface rights on unpatented mining claim,” and it refers to—

Ms. Catherine Wyatt: Can I just clarify one thing? I mean, if you went all the way to a mine or something, then there are requirements further down the line on a patent where you own the mining rights.

Mr. Randy Hillier: Right.

Ms. Catherine Wyatt: But as far as this early staking and exploration—

Mr. Randy Hillier: Okay. So if I then open up a mine on my property to extract those minerals, you're saying it wouldn't be called a patented claim or an unpatented claim?

1720

Ms. Catherine Wyatt: At that further down stage, it's just a question of whether you're an owner or not. If you're developing a mine, then we'd be looking at closure plan requirements, potentially, for you to do mining.

At the level of advanced exploration or mine production, as long as you qualify as a proponent, and that includes an owner of mining lands, then you would have to comply with some requirements in this act. But that's at a bit of a later stage than I think you're talking about here.

Mr. Randy Hillier: But it would still be—this unpatented or patented claim would not have any—

Ms. Catherine Wyatt: Right, because they can't stake a claim or have a claim on your private land.

Mr. Randy Hillier: Okay. Let me get back to the amendment, then. Thank you for the clarification.

Under the bill right now, subsection 29(1), it says, “Subsection 51(1) of the act is amended by adding ‘except the right to sand, peat and gravel’ after ‘surface rights’.” My amendment says, “The holder of an unpatented mining claim has no right to the use of the surface rights except as permitted under this act.” That whole subsection 51(1) goes through surface rights use with a mining claim.

Mr. Michael A. Brown: Is there a question?

Mr. Randy Hillier: Well, the motion is saying that under 51(1) and under Bill 173, it gives the holder of that unpatented claim the rights and usage of surface on private property. What we're saying here is that clause (1) would say that the holder has no right to the surface rights except—and we'll get through these amendments as they continue on—as permitted under this act. You'll see there are a number of other changes that I'm proposing here.

Ms. Catherine Wyatt: If I could maybe just clarify, because I think there might be some confusion about this. Subsection 51(1) is talking about giving the mining claim holder a first right to use the surface to develop the mining claim over any subsequent user. What this means is, the mining claim was there first. They have a right to use the surface ahead of anybody who comes along later and wants to use it. In other words, there's no private surface rights owner involved when we're talking about this section. This is intended to deal with crown land that's open, where there's already a mining claim.

Mr. Randy Hillier: Where does it say that—if this is intended for crown lands, then a number of these amendments will be withdrawn. But if it's not exclusive to that crown land—

Ms. Catherine Wyatt: It's the way it's set out, because it says that except as provided, the holder of an unpatented mining claim has the right prior to any subsequent right to use the surface rights. That means the mining claim is there and they get first rights over any subsequent person who comes along and says, “By the way, I want to use these surface rights for something else.” That can't be done if there's already a private surface rights holder.

It's not intended to govern in that situation at all; it's intended to govern in the case where it's crown surface rights, crown mining rights and nobody else is there. There's a mining claim. Now somebody else is coming along, saying, “I want to use that surface. I want to use that property.” What this says is that normally the mining claim holder who is already in place has first dibs, as it were, but we're setting out a process in the rest of 51 to talk about how to deal with conflicting land uses by other people who come along and want to do wind farms or something on the surface.

Mr. Randy Hillier: Okay. I'm going to withdraw this amendment. As I go through this, my reading of it is that

it was possibly for crown lands but not clearly stipulated. I think I'll withdraw 16.2.

The Chair (Mr. David Oraziotti): All right, thank you. We can move to your next motion, which is 16.3.

Mr. Randy Hillier: And that will be withdrawn as well.

The Chair (Mr. David Oraziotti): The next motion is NDP motion 16.3.1., before we come back to Mr. Hillier. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I move that subsection 51(4) of the Mining Act, as set out in subsection 29(2) of the bill, be struck out and the following substituted:

"Minister's order to restrict part of surface rights

"(4) Despite subsection (1), the minister may by order impose restrictions on a mining claim holder's right to the use of portions of the surface rights of a mining claim if,

"(a) the portions of the surface rights are on lands that are considered by aboriginal communities to be sites of aboriginal cultural significance; or

"(b) any of the prescribed circumstances apply."

The argument is pretty straightforward. I made the argument the other day, and I'm not sure I want to go through the entire debate again. Simply put, it's to give First Nations the ability to determine what culturally significant sites are, so that they're in the driver's seat. They decide and they say, "This is a burial ground; this is ground that is significant to us, due to cultural reasons." They'd be deciding where those grounds are and would be able, by their own right, by notice of the minister, to withdraw those from staking.

Mr. Michael A. Brown: I will make an argument similar to the one I made the other day. What this amendment does is leave, as the member says, total identification of sites of aboriginal significance to aboriginal communities or Metis groups, or whoever, I guess.

What we would like to do is bring regulations that constitute the framework for deciding what those are; rather than deciding each individual one, have a consistent framework across all of the province to make these designations so that we have consistency. Then, whether we're in my part of the province or the northwest or wherever we happen to be, there's an agreement with aboriginal communities and Metis that these are the standards we will apply to decide cultural significance. So we'll have the same criteria used across the province in order to make these designations.

I think that is probably what would come out of a consultation with aboriginal communities, First Nations and Metis. We would proceed in that manner. We would not—and I don't think the member is suggesting that—have arbitrary decisions by various groups about what they might be. I think we do need standardized criteria for deciding what these areas of cultural significance may be.

Mr. Gilles Bisson: I guess we have a difference of opinion as to who should determine what is culturally significant. The argument that the parliamentary assistant makes is, we need a process that's established in which

the crown has some control about what is culturally significant, and that you apply some standards so those standards are met across the province.

1730

I understand that. However, I guess where my difference of opinion would be is that I would want First Nations to develop that criteria. It's my sense that if you give First Nations this ability, they will have to develop the criteria. It's like, build it and they will come. I come from the opposite side of the argument. I don't believe that First Nations would abuse this. I think 99% of First Nations want development, just like 99% of anybody else wants development. They would be then put in the position of having to develop some criteria because it would necessitate some type of criteria. Where I'm coming from is that I'm confident that NAN and Treaty 3 and others would be able to do this and they would be the ones in the driver's seat.

Now, saying all of that, I hear the government's argument. My question to you is, in developing—part of the problem is in developing whatever the regs will be around this and what the criteria are. Is there any guarantee that First Nations will have a final say about what those criteria for what's determined to be significantly, culturally—I can't speak anymore; I'm getting like my friend all of a sudden. Is there any guarantee that, under your process, First Nations will have the say as to what is designated of aboriginal cultural significance?

Mr. Michael A. Brown: I suppose in all of life there are no absolute guarantees, but the government's position is that we believe that we and the aboriginal communities—First Nations, Metis—can arrive at a consensus position that the government can adopt. Failing that, I don't know how you solve it.

Mr. Gilles Bisson: I won't belabour the point. I think I've made my point. We have a difference of opinion. I think they should be in the driver's seat. You're saying that the government ultimately has to make the decision—

Mr. Michael A. Brown: The problem is, I'm not sure what your point is, because what you're saying is that it should be the First Nations. Which First Nations? What we're talking about is a consistent approach from one part of the province across the province, that the aboriginal communities come together to develop that consensus, and those criteria that have been developed by First Nation people, by Metis, by aboriginal people, are applied across the province by matching to the criteria that they have decided upon so that we have some consistency.

I'm not sure, under the member's suggestion, is he talking about individual First Nations? Is he talking about the various Metis organizations? We had a presentation from aboriginal peoples, I believe in Sioux Lookout, if I recall. What the government would like to do is, in consultation with our First Peoples, develop a broad consensus upon what these sites of cultural significance are and then we have a benchmark to apply to the area.

Mr. Gilles Bisson: I hear what your argument is and it's an argument put forward in the past. I just say that

from the First Nations perspective, they're not one homogeneous community as far as "nation." The sense from First Nations is that they've never given up their sovereign right to govern themselves, and the Mushkegowuk Cree or the Crees are a different nation than the Ojibwas. You may end up, yes, with a different policy from one part of the province to the other, but that's the nature of the First Nations community, so I guess we have a difference of opinion.

Mr. Michael A. Brown: I'm not sure we actually necessarily do, recognizing that certain aboriginal cultures have certain values that are different, perhaps, than others. I think that could be incorporated into a consensus position amongst First Nations, aboriginal peoples and Metis. I think what we want to do and what we're trying to do is encourage the First Nations, the Metis and the aboriginal peoples to provide us with the criteria that provides some certainty on these lands.

The Chair (Mr. David Orazietti): Mr. Hillier, go ahead.

Mr. Randy Hillier: Yes, I'd just like to add in here. When you look at this legislation, you can see why we've had so many conflicts in the past, and we can see why those conflicts are going to continue, in my view. We've talked about criteria and whatnot in previous debate on other amendments, but now we're into section 51, which talks directly and specifically about surface rights on unpatented mining claims. Here, there is no reference to the aboriginal communities. Somebody down the road will be able to point at different parts of this legislation and clearly say yes and no, that the aboriginal communities will be involved in developing criteria and making decisions.

So I may be supportive of the third party's amendment here because it does, once again, add some clarity and prevent the conflicts in section 51, surface rights on mining claims. We're now adding in the same thought and providing the same clarity for in the future when people are using this act, that yes, during the disposition of surface rights on mining claims there is—as the third party's amendment says, “the portions of the surface rights are on lands that are considered by aboriginal communities to be sites of aboriginal cultural significance.” So we're putting that back in, in what happens with surface rights in the section where it's applicable. I think it provides clarity to people down the road.

Well, you can shake your head and you can frown and whatnot, but listen, we're dealing with the section about surface rights with mining claims. The amendment says, “Minister's order to restrict part of surface rights.” We're including those aboriginal communities in that section. It's a good, significant and valid amendment.

Mr. Michael A. Brown: I see that Ms. Wyatt is anxious to help us with the interpretation.

Ms. Catherine Wyatt: I just wanted to clarify that, as I understand Mr. Bisson's motion, he isn't inserting the aboriginal considerations for the first time in his motion, if you see in Bill 173—

Interruption.

Mr. Randy Hillier: You're going to have to, with all the noise in the background—

Ms. Catherine Wyatt: In Bill 173, as it exists now, there is a subsection (4) which talks about restriction of service rights and speaks to portions of the surface rights on lands “that meet the prescribed criteria as sites of aboriginal cultural significance.” So we are already taking into account aboriginal culturally significant sites in the bill. The difference is that Mr. Bisson is coming at it from a different direction as far as who determines when it's a site of aboriginal cultural significance and how we arrive at that decision.

Mr. Randy Hillier: Yes.

Ms. Catherine Wyatt: I just understood you to be saying it wasn't in the bill at all.

Mr. Randy Hillier: No, it says here that subsections 51(2), (3), (4), (5) and (6) of the act are repealed and then all these are included. Mr. Bisson's amendment reinforces the aboriginal component on surface rights, where it's not in those amendments right now in that part of the bill. Somebody will be able to argue under this section that we neglected to include or identify considerations from aboriginal communities.

Ms. Catherine Wyatt: I'm sorry, you're losing me again, because this is in the bill already.

Mr. Randy Hillier: In a previous section.

Ms. Catherine Wyatt: No, it's in 51(4).

Mr. Randy Hillier: Subsection (4) is repealed—

Ms. Catherine Wyatt: Well, that's in the motion.

Mr. Randy Hillier: —and the new (4) says—yes?

Ms. Catherine Wyatt: If you read the bill, you will see that subsection (4) now, as is in here, refers to surface rights restrictions where there are lands that meet “prescribed criteria as sites of aboriginal cultural significance.” That's in the bill now. So that's there, and it's in section 51 about surface rights.

Mr. Randy Hillier: And the third party's amendment, “that are considered by aboriginal”—so he's—

Ms. Catherine Wyatt: I just kept hearing you saying it wasn't in the bill at all now, and people would look in future and wouldn't see it in here on surface rights, where it is. But okay.

Mr. Randy Hillier: Mr. Bisson?

Mr. Gilles Bisson: I made my point, and I think I've got a difference of opinion with the government. I'm fine for the vote.

The Chair (Mr. David Orazietti): Mr. Brown?

Mr. Michael A. Brown: I'm fine for the vote too. I think the government has made its point both here and the other day.

Mr. Gilles Bisson: Yes, and I will have further amendments later where I'll deal with this more substantively, so I'm not going to spend a lot of time on this particular—I think that it should pass. I will vote in favour, and I'm asking for a recorded vote when we get to that. But it's clear that you made your position and we have a difference of opinion.

Mr. Michael A. Brown: Agreed.

The Chair (Mr. David Oraziotti): Anything further to add, Mr. Hillier?

Mr. Randy Hillier: We've talked about it. I think the government side shouldn't provide that consideration for aboriginal—that they're involved in making that determination. However, I side with the third party.

Mr. Gilles Bisson: Okay, thank you. I appreciate that.

The Chair (Mr. David Oraziotti): All right. Seeing no further debate on this motion, NDP motion 16.3.1—

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Mr. Randy Hillier: And—

The Chair (Mr. David Oraziotti): Are you asking for a—

Mr. Randy Hillier: I think we should take a 20-minute recess.

The Chair (Mr. David Oraziotti): All right, members, we'll need to return to committee to vote on this motion on Monday or Wednesday, at our next scheduled meeting.

Mr. Gilles Bisson: Oh, we're done?

The Chair (Mr. David Oraziotti): Committee is in recess until next time that we meet to vote on the NDP motion.

Mr. Gilles Bisson: Thank you.

The Chair (Mr. David Oraziotti): Committee is adjourned for the day.

The committee adjourned at 1741.

CONTENTS

Wednesday 30 September 2009

Mining Amendment Act, 2009, Bill 173, *Mr. Gravelle* / **Loi de 2009 modifiant la Loi
sur les mines, projet de loi 173, *M. Gravelle*..... G-1075**

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Laurel C. Broten (Etobicoke–Lakeshore L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Also taking part / Autres participants et participantes

Ms. Catherine Wyatt, legal counsel,

Ministry of Northern Development, Mines and Forestry

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Catherine Oh, legislative counsel

G-42



G-42

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Monday 5 October 2009

Journal des débats (Hansard)

Lundi 5 octobre 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Comité permanent des affaires gouvernementales

**Loi de 2009 modifiant
la Loi sur les mines**

Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Monday 5 October 2009

Lundi 5 octobre 2009

The committee met at 1416 in room 151.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT

LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Oraziotti): Standing Committee on General Government, considering clause-by-clause of Bill 173, pursuant to standing order 71(d), "No bill shall be considered in any standing or select committee while any matter, including a procedural motion, relating to the same policy field is being considered in the House." As that's the case, because there's a time allocation motion, this committee is adjourned until Wednesday.

The committee adjourned at 1417.

CONTENTS

Monday 5 October 2009

**Mining Amendment Act, 2009, Bill 173, *Mr. Gravelle* / **Loi de 2009 modifiant la Loi
sur les mines, projet de loi 173, *M. Gravelle*..... G-1087****

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Laurel C. Broten (Etobicoke–Lakeshore L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Catherine Oh, legislative counsel



Legislative Assembly of Ontario

First Session, 39th Parliament

Official Report of Debates (Hansard)

Wednesday 7 October 2009

Standing Committee on General Government

Mining Amendment Act, 2009

Chair: David Oraziotti
Clerk: Trevor Day

Assemblée législative de l'Ontario

Première session, 39^e législature

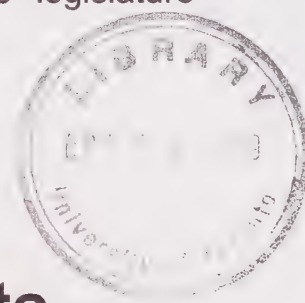
Journal des débats (Hansard)

Mercredi 7 octobre 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant
la Loi sur les mines

Président : David Oraziotti
Greffier : Trevor Day



Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 7 October 2009

Mercredi 7 octobre 2009

The committee met at 1606 in room 228.

MINING AMENDMENT ACT, 2009

LOI DE 2009 MODIFIANT
LA LOI SUR LES MINES

Consideration of Bill 173, An Act to amend the Mining Act / Projet de loi 173, Loi modifiant la Loi sur les mines.

The Chair (Mr. David Orazietti): Okay, committee. Picking up on section 29, we last left off at NDP motion 16.3.1. A recorded vote was called for.

Ayes

Bisson, Yakabuski.

Nays

Brown, Jeffrey, Kular, Mangat.

The Chair (Mr. David Orazietti): Thank you. The motion is lost.

Mr. John Yakabuski: Was I recorded as being with them?

The Chair (Mr. David Orazietti): Yes.

Mr. John Yakabuski: Ah, okay. Thanks.

The Chair (Mr. David Orazietti): Next motion: Conservative motion 16.4.

Mr. John Yakabuski: Do we have to read the motions?

The Chair (Mr. David Orazietti): Yes, we do.

Mr. John Yakabuski: That'll take a little time, eh?

I move that subsection 51(8) of the Mining Act, as set out in subsection 29(2) of the bill, be struck out and the following substituted:

"Survey of surface rights

"(8) Where an order is made under this section, or any agreement is made with the claim holder with respect to the use of surface rights for the purposes of this section, the minister may require a survey of the surface rights or of the portion of them that is affected by the order or agreement, and the survey shall be provided at the expense of the person who holds the mining claim."

The Chair (Mr. David Orazietti): Thank you, Mr. Yakabuski. Any further comments on that?

Mr. John Yakabuski: No, that pretty well covers it.

The Chair (Mr. David Orazietti): Any comment? Where were you for the last few days of committee? Mr. Brown, go ahead.

Mr. Michael A. Brown: I really can't compete with his argument, but we will be opposing it.

The Chair (Mr. David Orazietti): Okay. Any further comment?

Mr. Gilles Bisson: Just give me a second. Yes, okay, fine. That's fine.

The Chair (Mr. David Orazietti): All those in favour of the motion? Those opposed? The motion is lost.

That concludes the amendments that were proposed in section 29. All those in favour of section 29 being carried? Opposed? Section 29 is carried.

Section 30: All those in favour? Opposed? Section 30 is carried.

We have one outstanding motion that was set aside from an earlier day on section 12, Conservative motion 9.5. If we could deal with that motion now, that would be helpful.

Mr. Gilles Bisson: Motion 9.5?

Mr. John Yakabuski: Motion 9.5? So that would be back here—

Mr. Gilles Bisson: Oh, that's right. But it's already been read in; right?

The Chair (Mr. David Orazietti): I believe so.

Mr. Gilles Bisson: Yes, it's already been read in. We go to the debate or a vote; right?

The Chair (Mr. David Orazietti): Right.

Mr. Gilles Bisson: Now, remind me which one that is again, Clerk, without me going back to take a look—

Interjections.

Mr. Gilles Bisson: No, there was some discussion about this. I'm just trying to remember what it was. Can I ask the parliamentary assistant, or the—because I remember there was—well, I'd have to go back and pull all my stuff out. I threw it all away.

We had set this aside for a reason, and I'm just wondering if the ministry wanted to respond to it, because there was some talk about an amendment from the government side.

The Chair (Mr. David Orazietti): Mr. Brown, go ahead.

Mr. Michael A. Brown: We've decided not to make the amendment, just to assist Mr. Bisson.

Mr. John Yakabuski: The government was going to be making an amendment similar to this?

The Chair (Mr. David Orazietti): I think that was the—

Mr. Michael A. Brown: We were considering it.

Mr. John Yakabuski: And you've decided against that?

Mr. Michael A. Brown: Right.

Mr. John Yakabuski: That is the crux of the matter, Mr. Chair. My colleague Mr. Hillier, who cannot be here today, certainly has tried his darndest to try to get some co-operation on the part of the government on this bill and some of the deficiencies we saw as being glaring—and some not so glaring, but still apparent. He was frustrated, I must say, at his inability to get co-operation from the government. We want to register that dissatisfaction.

The Chair (Mr. David Orazietti): Okay. Thanks for those comments. Any further comments on motion 9.5? All those in favour? Opposed? The motion is lost.

Mr. John Yakabuski: Their hands went up when you said “in favour,” didn't they?

Mr. Michael A. Brown: No, no, no.

The Chair (Mr. David Orazietti): They went up when I said “opposed.”

Mr. John Yakabuski: You're very quick.

The Chair (Mr. David Orazietti): I assume we need to go back—yes, it did. All those in favour, as amended, of section 12? Opposed? The section is carried.

We can go back to section 31, Conservative motion 16.5, Mr. Yakabuski.

Mr. John Yakabuski: I thought we just did that.

The Chair (Mr. David Orazietti): We're back to section 31.

Mr. John Yakabuski: Okay, right.

I move that clause 59(a) of the Mining Act, as set out in section 31 of the bill, be struck out and the following submitted—

Mr. Gilles Bisson: Substituted.

Mr. John Yakabuski: Substituted. I've just reached for my glasses now, Gilles, thank you.

“(a) if the claim is on land for which there is a surface rights owner, unless the requirements in subsection 46.1(1) have been met; or.”

Mr. Gilles Bisson: Or. I'm waiting for the “or.”

Interruption.

Mr. Gilles Bisson: And I'd better turn off my cell-phone.

The Chair (Mr. David Orazietti): I don't know if there's any further comment you want to make on this, Mr. Yakabuski.

Mr. John Yakabuski: Robert Redford may want to comment.

Mr. Gilles Bisson: Yes, Robert Redford is about to comment.

Mr. John Yakabuski: I just heard Marvin Hamlish, or—

The Chair (Mr. David Orazietti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: Section 59 is to transfer a claim without the minister's consent. I'm kind of wondering why it is that you're asking for this amendment as I read

it. It says that without the minister's consent, a mining claim is not transferable on an application of a lease that has been made with respect to a mining claim, and you're asking to have that changed to say that if the claim is on land of which there is a surface right owner. I guess that's in keeping—

Mr. John Yakabuski: You're asking me why we're asking for that amendment? You would, wouldn't you? To be perfectly honest with you, my—

Mr. Gilles Bisson: Esteemed colleague.

Mr. John Yakabuski: —esteemed; I was going to use—

Mr. Gilles Bisson: I understand the argument. Thank you very much.

Mr. John Yakabuski: Thank you.

The Chair (Mr. David Orazietti): Any further comments? All those in favour of 16.5, the Conservative motion? Those opposed?

Interjection.

The Chair (Mr. David Orazietti): All those in favour? All those opposed? The motion is lost.

Motion 16.6, Mr. Yakabuski, go ahead.

Mr. John Yakabuski: I'm going to have to pick up the speed here; I can see that.

I move that clause 59(a) of the Mining Act, as set out in section 31 of the bill, be struck out and the following substituted:

“(a) if the claim is on land for which there is a surface rights owner, unless the requirements in clause 46.1(1)(a) have been met; or.”

Ms. Catherine Oh: There was a slight change to—

Mr. John Yakabuski: It's a slight change. There's an (a) in this one where there was no (a) in the previous one.

The Chair (Mr. David Orazietti): Mr. Bisson, you want to provide a comment?

Mr. Gilles Bisson: Is that “or” O-R or O-R-E? I knew you'd get that one.

The Chair (Mr. David Orazietti): Thanks for that, Mr. Bisson.

All those in favour of the motion? All those opposed? The motion is lost.

Section 31: Shall it carry? Carried.

Section 32: Seeing no amendments, shall section 32 carry? Carried.

Section 33, NDP motion number 17. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I move that subsection 65(1) and (2) of the Mining Act, as set out in section 33 of the bill, be struck out and the following substituted:

“Assessment work or payments

“65.(1) After a mining claim is recorded, the claim holder shall perform or cause to be performed such annual units of assessment work as are prescribed.

“Report

“(2) Every mining claim holder shall submit a report of the assessment work done together with such other information as may be prescribed.”

We're in time allocation, so I kind of know where this is going to go, but for the record, we did hear from a

number of people involved in the mining industry on the exploration side who worry that by going to payment in lieu—"payment in lieu" meaning, once a claim is staked under the current Mining Act, you have to do a certain amount of assessment work physically on a claim. That work that is done is then registered with the Ministry of Northern Development and Mines and is available for other people in the industry to take a look at what is it that is going on geologically with claims around the province.

That collective database is what makes Ontario a really interesting place to do exploration because we not only have some of the best geology in North America and maybe the world; we have a really good system of gathering geological information that other explorationists are able to review and say, "Hmm. There's something interesting. Maybe I'll go look over there."

The effect of having to do assessment work on claims is that people physically have to get on the ground, they have to do some form of work and then they have to report what they find and what work they've done back to the ministry, and that information, then, is available for others to look at to see: Does this geographic area have some interest when it comes to mineral potential?

1620

The government is proposing, because of map staking—well, maybe not because of map staking. I should reframe that. The government is suggesting that a person could actually do a payment in lieu instead of doing the assessment work. Many people, including me, believe that's a bad idea, for the following two reasons: One, if you don't do the physical assessment work on the claim, that's information that is not gathered as far as building up the geological database of Ontario, and again, we have one of the best. So one of the worries on the part of some is, the more information out there available to exploration, the better they'll be able to identify areas of interest. The other issue which is probably bigger for some is the issue of, if you have a system where people can do payment in lieu, it will then mean that a lot of people who make their living from going onto these claims, by way of permit with the new act—I understand that—and the training etc., will not do that physically, which means it will remove a certain amount of work available now to many people who are involved in this particular industry. A lot of people particularly affected are going to be First Nations communities, where a number of these people are employed by way of doing the assessment work, and a number of other people—so both the lack of jobs that we'll lose as the effect of payment in lieu and, number two, the issue of the mineral database. So we'd ask the government to support this amendment. If you're going to go to map staking, at the very least we should not have payment in lieu.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. John Yakabuski: We've actually proposed the identical amendment, so we will be supporting the NDP motion here. Our motion won't be coming to the floor

because, of course, theirs was filed previous to ours, which gives it precedence, but the wording is exactly the same. Our reasoning is much the same as that of the member for Timmins—James Bay, my friend Mr. Bisson, who has great concerns over the situation where we'll have people basically on paper with no work, with no assessments, no work being done on the claim, simply staking that for as long as they want, as long as they continue to do the paperwork. For many of the reasons that he's articulated, we don't believe that that accomplishes what we should be doing under this act. We think that this amendment would cover some of that.

The Chair (Mr. David Oraziotti): Mr. Brown?

Mr. Michael A. Brown: I'm actually delighted this amendment has come up, because it gives us an opportunity to discuss this issue. This is another key component in the modernization of Ontario's mining system. Four Canadian jurisdictions currently use both map staking and payment in lieu for assessment work, those being British Columbia, Quebec, Manitoba and Saskatchewan. Payments in lieu in those jurisdictions account for around 5% of the assessment work credits filed in those jurisdictions. This provision has been requested by a significant number of exploration companies who expect it as a matter of course based on their experience in the other mining jurisdictions.

This is important: Payments in lieu are not intended to replace assessment work requirements. Naturally, the government has a keen interest in ensuring geological information is obtained through exploration work, but as in other mining jurisdictions, the ability to make these payments can provide additional flexibility to the Industry. The payment-in-lieu provisions provide companies with another tool for keeping their claims in good standing. Right now, they can apply for extensions or exclusions of time to complete assessment work credits. About 3% of the current mining claims in Ontario have had an extension or an exclusion of time—but it wouldn't have paid anything, in that event. The assessment work regulation deals with conditions for obtaining extension of time to complete assessment work and would also set out the conditions and limitations on a company's use of payments in lieu. In other words, by regulation we are going to address most, if not all, of the concerns we've heard about map staking.

Mr. Gilles Bisson: Can you repeat the last part, please?

Mr. Michael A. Brown: Sure. The assessment work regulation deals with conditions for obtaining extension of time to complete assessment work and would also set out the conditions and limitations on a company's use of payments in lieu. For example, payments in lieu could be permitted to deal with situations of heightened exploration activity when it may not be possible to secure exploration services—i.e., there are a limited number of drilling contractors available and they're tied up with other projects or there was a forest fire and you can't get on your claim because of that. Those sorts of things are what the government considers payments in lieu are there

to account for. They're not there just to provide an opportunity to keep a great number of claims open because you are going to pay the assessment work.

Mr. Gilles Bisson: If I am to understand, the details of this will be—

Mr. Michael A. Brown: In regulation.

Mr. Gilles Bisson: —in the regulations themselves, which brings me back to the point that part of the problem in dealing with legislation such as this, because it's fairly technical, as the parliamentary assistant well understands, is that, without the regulation, you're really in a bit of a spot to be able to make sure that, in the end, you get what you want, either as an opposition party or government party—well, less so a government party—when it comes to the actual act.

I just want to say that I accept the point put forward. I will see what comes out in regulation, because often the experience is that regulations never end up being what we want them to be. That's why we've asked for amendments in legislation, in order to create some sort of a process to draft the regulations to make sure, in fact, that we do that, because it was clear, when we listened to explorationists, that they were very concerned about this particular section. Let's hope that the government holds true to what they say they will do when it comes to regulation.

Mr. Michael A. Brown: My understanding is, on these regulations, we will be consulting with the industry.

Mr. Gilles Bisson: Okay. Time will tell.

The Chair (Mr. David Oraziotti): Okay.

Mr. Michael A. Brown: Exactly.

The Chair (Mr. David Oraziotti): All right. I see no further debate. All those in favour of NDP motion number 17?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Ayes

Bisson, Yakabuski.

Nays

Albanese, Brown, Jeffrey, Kular, Mangat.

The Chair (Mr. David Oraziotti): The motion is lost. Conservative motion 17.1.

Mr. John Yakabuski: Given that this motion is exactly the same as the NDP motion, I simply want to read into the record that we had a motion that was the same but, at this time, we will withdraw the motion because we know what the outcome's going to be on the vote.

The Chair (Mr. David Oraziotti): Okay. NDP motion 18.

Mr. Gilles Bisson: I move that subsection 65(5) of the Mining Act, as set out in section 33 of the bill, be struck out.

It's fairly clear. We're trying to clean up the legislation as a result of winning the previous amendments, so therefore it's kind of a moot point.

Mr. Michael A. Brown: Are you withdrawing it?

Mr. Gilles Bisson: Yes, we'll withdraw it because there's not much we can do.

The Chair (Mr. David Oraziotti): Okay, withdrawn.

Conservative motion 18.1: You can speak to that, but I assume it's—

Mr. John Yakabuski: It would be in order to table it, then, although it would also be a moot point as well. Our motion 18.1 would mirror the—well, not mirror, because that would be opposite, but it would be exactly the same as the NDP motion. We're going to be withdrawing that, too, but I certainly do want to make the point that Mr. Bisson was making with regard to regulation sometimes not reflecting what we've seen as a promise from the government when tabling a bill.

I recall how the pharmacists felt they had an undertaking from the government on Bill 102, and when the regulations came out, they were nothing like what they had—and that was a consultative process, I do say to the parliamentary assistant, as well. So I hope that this process is more upfront and it pays more attention to the consultation of the stakeholders.

We'll withdraw the motion.

The Chair (Mr. David Oraziotti): Thank you.

Section 33: Shall section 33 carry? Opposed? It's carried.

Section 34: NDP motion number 19.

Mr. Gilles Bisson: I move that subsection 66(1) of the Mining Act, as set out in subsection 34(1) of the bill, be amended by striking out "or payments made in place of assessment work."

Again, we were just, in this particular amendment, trying to get at the issue of payment in lieu. Therefore, we'll call for a vote on it, just to change it up a bit.

The Chair (Mr. David Oraziotti): Any further comments?

1630

Mr. John Yakabuski: I just want to say that we have a motion—not an emotion; we do have emotions—that is exactly the same as the NDP's. I only want to take the time to congratulate Mr. Bisson of the NDP for getting all their amendments in ahead of ours.

The Chair (Mr. David Oraziotti): All right, thank you for that. NDP motion number 19: All those in favour? Those opposed? The motion is lost.

Conservative motion 19.1, which is a duplicate.

Mr. John Yakabuski: It's a duplicate; we'll withdraw that, Chair.

The Chair (Mr. David Oraziotti): Thank you. NDP motion 20, Mr. Bisson.

Mr. Gilles Bisson: Yes, just one second. I've just got to get all of my papers in order again.

Mr. John Yakabuski: I believe that is another duplicate. Did we get just one in ahead of you?

Mr. Gilles Bisson: Yes, something like that.

I move that subsection 66(3) of the Mining Act, as set out in subsection 34(3) of the bill, be amended by striking out “or payments made in place of assessment work.”

Again, it's the same issue. We're trying to deal with the payment in lieu, and we will withdraw that motion.

The Chair (Mr. David Orazietti): Okay, thank you. Conservative 20.1—Mr. Yakubuski, I assume.

Mr. John Yakubuski: Withdrawn.

The Chair (Mr. David Orazietti): Thank you. That's everything in section 34. Shall section 34 carry? Opposed? Carried.

Sections 35, 36, 37, 38 and 39: There are no amendments put forward. Shall sections 35 to 39, inclusive, carry? Opposed? That's carried.

Section 40, NDP motion 22, Mr. Bisson?

Mr. Gilles Bisson: Section 40, subsection 78.1(1)—*Interjection.*

Mr. Gilles Bisson: What's that? Sorry, Parliamentary Assistant, I thought you said something.

Mr. Michael A. Brown: I think I did.

The Chair (Mr. David Orazietti): I see motion NDP motion 22 as the next item. Sorry, Mr. Brown?

Mr. Michael A. Brown: I'm looking over at the clerk. Is it not appropriate to—

The Clerk of the Committee (Mr. Trevor Day): No, 21 we're actually going to deal with right before 31—is it 30 or 31? There's a reference to it. When we first put it out, the order wasn't 100% correct, so we will be dealing with 21, but a little later on.

Mr. Michael A. Brown: Okay. Go. Thank you.

Mr. Gilles Bisson: I move that subsection 78.1(1) of the Mining Act, as set out in section 40 of the bill, be amended by adding “or accommodation” after “aboriginal community consultation.”

The argument again is pretty simple. We had this discussion earlier in the act, and that is basically that there be accommodation for aboriginal communities when it comes to dealing with areas that are sort of culturally sensitive. I'd just like to hear what the government has to say on that one.

Mr. Michael A. Brown: Thank you.

Mr. Gilles Bisson: Caught you off guard, did I?

Mr. Michael A. Brown: Yes. The purpose clause of Bill 173 includes the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult. Accommodation, where appropriate, has been recognized by the courts as included in the concept of duty to consult. Bill 173 appropriately captures these concepts in the scheme proposed, and the tools available are consistent with the direction of the Supreme Court of Canada with regard to this consultation.

The Chair (Mr. David Orazietti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: The issue here is that it's clear that in the bill the government is dealing with the issue of consultation. The Supreme Court has ruled that there is a duty to consult on the part of the crown, but there's also a

duty to accommodate. What we're getting at in this particular amendment in section 40 is to deal with it. You don't just have to consult, but you have to accommodate. It's one thing to say, “Knock, knock, knock. I'm here; how's it going? I'm talking to you. What do you have to say?” It's quite another thing to try to find some way to accommodate what it is that you've found once you've consulted somebody.

So we're trying to get at the issue of trying to be in keeping with the decision of the Supreme Court not only when it comes to consultation, but when it comes to accommodation.

Mr. Michael A. Brown: We not only are trying to keep with the concept; we are doing exactly what the Supreme Court decision says. Accommodation, where appropriate, has been recognized by the courts as included in the concept of duty to consult. So it's included, where appropriate.

Mr. Gilles Bisson: I would just argue that there have been a number of people who have talked to you, have talked to me and have talked to this committee from the aboriginal community who say quite the opposite, in the sense that the government has moved partway towards dealing with what was in the Supreme Court, but the bill does not deal with the issue of accommodation.

Mr. Michael A. Brown: We believe it does.

Mr. Gilles Bisson: Tell me where it says “accommodation.”

Mr. Michael A. Brown: Duty to consult includes accommodation, where appropriate.

Mr. Gilles Bisson: Ah, see? But that's the point. Again, we're in time allocation so I'm not going to spend a lot of time on this—I wish I could—but the issue is that First Nations recognized that they won the right for the crown to consult; their argument is that you don't only have the duty to consult; you must accommodate, and to say that consultation is the same as accommodation is a bit of a stretch.

The Chair (Mr. David Orazietti): Okay, thank you. NDP motion number 22: All those in favour?

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for.

Ayes

Bisson.

Nays

Albanese, Brown, Jeffrey, Kular, Mangat, Yakubuski.

The Chair (Mr. David Orazietti): The motion is lost. Government motion number 23, Mr. Brown.

Mr. Michael A. Brown: I move that the English version of subsection 78.1(1) of the Mining Act be amended by striking out “aboriginal community consultation” and substituting “aboriginal consultation.”

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Michael A. Brown: This is consistent terminology. It's really a housekeeping amendment. The amendment provides consistency in terminology used in subsequent sections and subsections in this part. Not all aboriginal groups that may be consulted are organized by community, or choose not to be represented at the community level. This provides flexibility where communities wish to work together, for example, through their tribal councils or other organizational groupings. It's really just housekeeping.

The Chair (Mr. David Oraziotti): Mr. Bisson, go ahead.

Mr. Gilles Bisson: I would argue that it's probably not just housekeeping, because we did hear from various groups that presented to us that there is the belief on the part of many aboriginal people that the person who speaks for them is their community and therefore, if there's going to be some sort of mining activity that takes place on a territory, let's say within a NAN territory, there needs to be clearly in the act a duty that the consultation be done with the community, and what you're moving to is aboriginal consultation, which means to say the larger body. So my question is: Would this amendment preclude the consultation with the community?

Mr. Michael A. Brown: No.

Mr. Gilles Bisson: Second question: Would, then, it mean that there has to be a consultation with the community?

Mr. Michael A. Brown: My guess is yes.

Mr. Gilles Bisson: Okay, thank you.

Mr. Michael A. Brown: Wait. We're going to be enlightened by—

Mr. Gilles Bisson: I'm satisfied with the answer.

Mr. Michael A. Brown: Yes, I know you are.

Ms. Catherine Wyatt: I just want to make sure I heard the last question correctly, to be sure. You will note that in the rest of the bill we did refer to "aboriginal consultation," and that's sort of a standard term. "Aboriginal community consultation" got in here.

As to your concern, certainly by saying "aboriginal consultation," it doesn't preclude talking to the community and it isn't inconsistent with it. The community, generally speaking, is the one who has the rights, so that's why the communities are very sensitive about making sure they're consulted. What we're saying here is that "aboriginal consultation" is a broader term. "Aboriginal community consultation" is much narrower and may have the unintended result of actually meaning you can't consult with anyone else, even if the communities, for example—

Mr. Gilles Bisson: Can you repeat the last part? I'm sorry.

Ms. Catherine Wyatt: Yes. Reading it as "aboriginal community consultation" could have the unintended result of meaning you can't consult with anyone else, even if the community, for example, says, "We want you to consult with the tribal council on our behalf." They

should have the ability to say they want someone else to represent them, and there may be groups within a certain organization that want to have another level—

Mr. Gilles Bisson: So then it would be a question in the community to decide who is consulted?

1640

Ms. Catherine Wyatt: Yes, but we would have a problem if the legislation says that it can only be the community. That's all we're trying to get rid of here.

Mr. Gilles Bisson: So the effect would be that if there's going to be exploration or development in and around a particular aboriginal community and they decide to delegate the consultation to their tribal council or whoever, they would then have the authority to delegate, but it doesn't preclude the responsibility to consult the local community.

Ms. Catherine Wyatt: Yes. This actually has the problem of potentially making it too narrow, that's all.

Mr. Gilles Bisson: I just want to be clear. I think I got the answer the first time, but I'll double-check. This would allow a community to say, "I am not in a position to be consulted because I don't have the capacity; therefore, I want the tribal council or some other agent that I name as a community to be the body which you consult," number one. Number two, it would not allow a consultation to take place without the consent of the community, basically.

Ms. Catherine Wyatt: That's a bit of a loaded question, if we're talking consent. Let's go back to your first question. This isn't the authority for a community to decide who can consult on their behalf. They can do that anyway. We want to make sure that the legislation isn't creating a conflict where they want to have it done by someone else and the legislation insists that they do it themselves. That's all we're trying to get rid of.

Mr. Gilles Bisson: So it doesn't preclude the community from being consulted? That's my point.

Ms. Catherine Wyatt: Right.

Mr. Gilles Bisson: Okay. Now I got you. Thank you.

The Chair (Mr. David Oraziotti): Good. Any further comment on government motion 23? Mr. Yakabuski.

Mr. John Yakabuski: I share the concern of Mr. Bisson with the removal of the word "community." I certainly respect his knowledge and the closeness with which he has worked with the aboriginal communities and how they view these things. Using the same logic, we didn't support the last amendment where the word "accommodation" was inserted, because what defined "accommodation"? That could mean that in order to accommodate the aboriginal community, you have to give them exactly and everything that they're requesting, and that's not what consultation and negotiation are all about. That's why we voted against that amendment. But I also have my concerns with the removal of the word—I question the need for it. If the aboriginals see their community as being their spokespeople, why would we remove the word "community"? I understand the explanation, but I am still troubled by it.

The Chair (Mr. David Orazietti): Okay. Seeing no further debate, government motion number 23: All those in favour? Opposed? The motion is carried.

Motion 24R is a replacement motion. It is an NDP motion. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I move that clause 78.1(2)(b) of the Mining Act, as set out in section 40 of the bill, be amended by adding “or accommodation” after “aboriginal consultation.”

Again, we’re doing this series of amendments in order to make sure that it’s not just a question of the exploration company going in and saying, “I’ve talked to you; I’ve let you know what I’m doing. This is what I plan on doing,” and then the First Nation says, “We have some concerns around some environmental or economic issues,” and then there’s no accommodation of those issues. So we’re trying to get at the issue that there should be some accommodation, as set out within the Supreme Court decision.

The Chair (Mr. David Orazietti): Further comment?

Mr. Michael A. Brown: We’ve made our argument.

The Chair (Mr. David Orazietti): Okay. Thank you.

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for.

Ayes

Bisson.

Nays

Albanese, Brown, Jeffrey, Kular, Mangat, Martiniuk.

The Chair (Mr. David Orazietti): The motion is lost.

The next motion: government motion 25. Go ahead, Mr. Brown.

Mr. Michael A. Brown: I move that subsection 78.2(5) of the Mining Act, as set out in section 40 of the bill, be struck out and the following substituted:

“Amendment or renewal of permit

“(5) The director may, after considering the factors listed in subsection (2), amend or renew an exploration permit.”

This amendment clarifies the intent of this section to include renewals for permits and confirms that the director may amend and renew an exploration permit where the director feels that this is necessary or appropriate. If a question is raised about the original—oh, sorry. That’s good. So I think that’s fairly clear.

Mr. Gilles Bisson: How is that different than what’s in there now? How is it different?

The Chair (Mr. David Orazietti): Ms. Wyatt, care to comment?

Ms. Catherine Wyatt: It really just adds the renewal, pretty much—

Interruption.

Mr. Gilles Bisson: Excuse me; there’s noise. Something’s shaking in this building and I don’t know what it is. The subway is running underneath the building—

The Clerk of the Committee (Mr. Trevor Day): Elevator.

Mr. Gilles Bisson: Oh, it’s the elevator?

Mr. John Yakabuski: It’s the cabinet meeting.

Mr. Gilles Bisson: “No, I don’t want the Ministry of Health,” say some people.

The Chair (Mr. David Orazietti): Okay, Mr. Bisson. Go ahead.

Mr. Gilles Bisson: So how is it different?

Ms. Catherine Wyatt: Right now if you look in the bill, that subsection talks about, “The director may”—

Mr. Gilles Bisson: In the act or in the amendment?

Ms. Catherine Wyatt: In the bill.

Mr. Gilles Bisson: In the bill. Not in the current act? Okay. Let me get the bill. Section 40, right?

Ms. Catherine Wyatt: Yes.

Mr. Gilles Bisson: Page 18, right?

Ms. Catherine Wyatt: Yes. So subsection 5 right now just refers to amending and not renewal.

Interjections.

Mr. Gilles Bisson: I didn’t hear a word. I’m sorry. Did not hear a word.

Ms. Catherine Wyatt: The existing subsection 5 in the bill says that the director may amend a permit, and we’re adding here “amend or renew” a permit. We have actually also added just some language that says the factors that should be considered in determining whether to renew or amend a permit.

Mr. Gilles Bisson: Okay. All right.

The Chair (Mr. David Orazietti): Any further comment? Government motion 25: All those in favour? Opposed? It’s carried.

NDP motion number 26: Mr. Bisson, go ahead.

Mr. Gilles Bisson: I move that section 78.2 of the Mining Act, as set out in section 40 of the bill, be amended by adding the following subsection:

“Agreement of aboriginal communities

“(5.1) No exploration permit shall be issued without the written agreement of aboriginal communities that have an interest in the area affected by the permit.”

You can call this the KI clause, I guess. What it says is that you would have to have the consent of First Nations to be able to do exploration in their traditional territory. It’s one of the ways, like I say—actually, you shouldn’t call it the KI; you should actually call it the De Beers clause, because that’s exactly what De Beers did. When they moved up to do exploration up on the Victor Project, they made the commitment to the First Nation of Attawapiskat and others that they would not move forward without an agreement on the part of the First Nation to go forward with that project. It would just make sure that First Nations have the comfort necessary to be able to go forward with a mining project.

It’s probably no different than what happens in a municipality now. If a mine was found, let’s say at Gillies Lake in Timmins, within the borders of the city of

Timmins, they would not be able to sink a shaft, build buildings and do the things that need to be done in order to put that mine into production without the express permission of the municipal council and hence the population of the city of Timmins, or whatever community it might be. This would give First Nations that same right.

The Chair (Mr. David Orazietti): Further comment?

Mr. Michael A. Brown: The bill already includes provisions for aboriginal consultation on proposed exploration plans and permits to ensure that their concerns are considered prior to undertaking exploration activity. The scope of consultation will be relative to the potential impact of the proposed activity. This is in addition to provisions that will allow for proactive withdrawal of lands of aboriginal cultural significance in advance of claims being staked. The graduated approach to consultation proposed by Bill 173 is consistent with the direction being provided by the Supreme Court of Canada.

Mr. Gilles Bisson: Let me ask you this question: If, within the boundaries of the city of Timmins, there was a mining project to be put into development which would include building physical structures on the mining property within the jurisdiction of the city, would the city have to give consent? The answer is yes.

1650

Mr. Michael A. Brown: You're talking about on crown land?

Mr. Gilles Bisson: It's not crown land. You're within the city of Timmins.

Mr. Michael A. Brown: It could be crown land within the city of Timmins.

Mr. Gilles Bisson: It could be within crown land of the city of Timmins, but still, if you're having to build physical structures within the city of Timmins, you would need a building permit. There is a mechanism by which municipalities have the right to determine what developments take place in their community.

I would not argue for a minute that the city of Timmins would oppose the development of a mine within its borders, because obviously we have lots of those and we will have many more, with the good graces of the geology we have.

The issue is that a municipal council in a municipality has the right to determine what development happens within their community. If a municipal council in Timmins was to say, "No, we're not going to allow a mine to go forward somewhere within the city of Timmins," I guess the municipal residents would have something to say about it, and there would be a mechanism—town hall meetings, meetings of the municipal council and others—to be able to deal with that.

There's no such provision for First Nations, and it would seem to me only fair that First Nations should have the same authority as a municipality when it comes to the development of a mining operation within their community.

Mr. Michael A. Brown: I'm going to ask for help here in a second, but it would seem to me that it does make a difference whether it's crown land or not crown

land. In many of our northern communities, there is crown land within the municipal boundaries. Official plans do not take into account crown lands. Crown lands aren't subject to municipal official plans. I would gather that that means they're not subject to building permits in the same way, because that all, in my understanding, flows out of zoning and official plans and that sort of thing.

So it does make a difference whether it's crown land or not, and I don't think the city of Timmins—we're not talking about a mine being created; we're talking about the exploration work. I think we need to differentiate that also. We're talking about exploration; we are not talking about a mine.

Mr. Gilles Bisson: But I hearken back to a project in the city of Timmins where someone was wanting to do exploration in the city of Timmins—I guess it would be southwest of the fault. The issue was that he wanted to bring diamond drills onto the old railway beds of the Ontario Northland and onto Gillies Lake. He was not able to do that without the permission of the city of Timmins, and that was on the exploration stage. Some of that land would have been crown land. Some of it would have been ONR lands, which fall under the legislation.

Mr. Michael A. Brown: I'm not familiar—

Mr. Gilles Bisson: No, I'm just saying that the frustrating part is that we haven't responded to the issue of giving First Nations equal authority to decide on development in their territory—equal to what a municipality gets. I know you're going to say, "Part of that is the Planning Act," but part of it also falls within the Mining Act.

Mr. Michael A. Brown: I think we also have to make the differentiation. First, we're not talking about reserves.

Mr. Gilles Bisson: I couldn't hear you. Excuse me?

Mr. Michael A. Brown: We're not talking about reserves in terms of the First Nations. They have those rights—

Mr. Gilles Bisson: I'm talking about traditional territories.

Mr. Michael A. Brown: You were talking about crown land where there have been traditional lands.

Mr. Gilles Bisson: Traditional territories.

Mr. Michael A. Brown: That is different, and we need to be clear on that. Maybe legal counsel can help me, but I just don't understand where you're going with this because I don't think your argument that it's the same—it just is not the same as the municipal—

Mr. Gilles Bisson: I'm not arguing it's the same. What I'm saying is not the same is the authority of a municipality versus a reserve.

The city of Timmins has defined boundaries within its municipality. Some of that land is private; some of that land is crown, to your argument. And if there's a development to happen within the municipal boundaries of the city of Timmins that is private land or lands that are owned by the municipality, it's pretty darn clear what their authority is under the Planning Act. There is no such provision within the Mining Act to deal with that

particular issue because most of the lands—well, all of the lands—outside a reserve are crown lands.

Hence, the second part: In the municipality of the city of Timmins, there is much in the way of crown land.

Mr. Michael A. Brown: Yes.

Mr. Gilles Bisson: And what I'm saying is that if you were to try to develop a mine within the city of Timmins on crown lands, a mining company would not go forward without having some discussion with the community of the city of Timmins and getting some form of permission. It's been done before. For example, we're having to deal with the possible redevelopment of the Hollinger gold mine, which—some of it would be crown land. I don't think it would be all private. I would think some of it would be crown; I'd have to take a look.

Again, they've got to come to the municipality. There's a whole process that the mining company has to go through—in this case, Goldcorp—in order to get to that stage should they decide to go there. There's no similar provision for First Nations. That's my argument.

I've made the argument; prepared to go to a vote.

The Chair (Mr. David Oraziotti): Okay, thank you. NDP motion number 26: All those in favour?

Mr. Gilles Bisson: Recorded.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Ayes

Bisson.

Nays

Albanese, Brown, Jeffrey, Kular, Mangat, Martiniuk.

The Chair (Mr. David Oraziotti): The motion is lost. Government motion number 27: Mr. Brown, go ahead.

Mr. Michael A. Brown: I move that section 78.2 of the Mining Act, as set out in section 40 of the bill, be amended by adding the following subsections:

“Reconsideration

“(6) If a decision of the director under this section is disputed in accordance with this act or the regulations and a recommendation is made that the director reconsider his or her decision, the director shall reconsider his or her decision and, where appropriate, may make a new decision based on any recommendations or determinations made.

“No activities during dispute

“(7) If a decision of the director under this section is disputed in accordance with this act or the regulations, no person shall carry out any activity that is a subject of the decision until a final determination under this act or the regulations has been made.”

The Chair (Mr. David Oraziotti): Thank you, Mr. Brown. Mr. Bisson, go ahead.

Mr. Gilles Bisson: I support this section. Good amendment.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Michael A. Brown: Carried.

The Chair (Mr. David Oraziotti): Government motion number 27: All those in favour?

Mr. Gilles Bisson: Recorded.

The Chair (Mr. David Oraziotti): Recorded vote has been called for.

Ayes

Albanese, Bisson, Brown, Jeffrey, Kular, Mangat.

The Chair (Mr. David Oraziotti): The motion is carried.

Government motion number 28: Go ahead, Mr. Brown.

Mr. Michael A. Brown: I move that the following section be added after section 78.2 of the Mining Act, as set out in section 40 of the bill:

“Transferees, assignees and successors of exploration plan

“78.2.1(1) Any transferee, assignee or successor of a person who submitted an exploration plan under subsection 78.1(1) shall comply with subsections 78.1(2) and (3) in respect of that exploration plan.

“Transferees, assignees and successors of exploration permit

“(2) Any permit that is issued under section 78.2 is binding upon and enforceable against any transferee, assignee or successor of the person to whom the permit was issued.”

The Chair (Mr. David Oraziotti): Any further comment? Mr. Bisson, go ahead.

Mr. Gilles Bisson: That's a good amendment. I'll support it.

Mr. Michael A. Brown: Carried.

Mr. Gilles Bisson: Just to be clear: The long and the short of the story is that if you transfer the company into somebody else's name, you can't absolve your responsibilities under the act. The long and the short of the story; right? Am I reading that right?

Ms. Catherine Wyatt: That's very close, but what we were trying to say was—

Mr. Gilles Bisson: I don't like it when I'm close.

Ms. Catherine Wyatt: We were trying to say that it's not so much the transfer of the company as it's the transfer of the claim.

Mr. Gilles Bisson: Okay. Got you.

Ms. Catherine Wyatt: But otherwise, yes.

Mr. Gilles Bisson: Yes, okay. I used the wrong term, but you're right. Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Ayes

Albanese, Bisson, Brown, Jeffrey, Kular, Mangat.

Nays

Martiniuk.

The Chair (Mr. David Orazietti): The motion is carried.

Government motion number 29: Go ahead, Mr. Brown.

1700

Mr. Michael A. Brown: I move that subsection 78.3(3) of the Mining Act, as set out in section 40 of the bill, be amended by striking out “a fine of not less than \$25,000” and substituting a “a fine of not more than \$2,500.”

This is to clarify a drafting error. The fine was never intended to be so high in these circumstances, relative to the other penalties in the act.

The Chair (Mr. David Orazietti): Any comments? All those in favour? Opposed? The motion is carried.

NDP motion number 29.1: Go ahead, Mr. Bisson.

Mr. Gilles Bisson: Withdrawn.

The Chair (Mr. David Orazietti): Okay. Government motion number 30: Go ahead, Mr. Brown.

Mr. Michael A. Brown: I move that the following section be added after section 78.3 of the Mining Act, as set out in section 40 of the bill:

“Liability for rehabilitation

“78.4 If a mining claim, mining lease or licence of occupation for mining purposes is transferred or assigned, the transferee or assignee is liable for any rehabilitation obligations imposed under this part or under an exploration plan or exploration permit with respect to the claim, lease or licence regardless of when or by whom those obligations were created.”

The Chair (Mr. David Orazietti): Any further comment? Mr. Bisson, go ahead.

Mr. Gilles Bisson: Again, I take it what it means is that anybody who comes onto that land and does work after the claim has been staked is liable; the long and the short of it. If that's the case, that's fine. Good amendment.

Ms. Catherine Wyatt: Again, the scheme of having the exploration planner permit is that there will be requirements for rehabilitation built into it. What we're trying to deal with here is similar to the earlier motion, where there's been a transfer before all those things are taken care of. So the person who picks up that property is going to be liable for finishing off any rehab work regardless of the fact that they didn't do the activity.

Mr. Gilles Bisson: You're being a bit more detailed, but I think we agree.

Ms. Catherine Wyatt: Fine.

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for.

Ayes

Albanese, Bisson, Brown, Jeffrey, Kular, Mangat.

The Chair (Mr. David Orazietti): The motion is carried.

Back to government motion number 21. Mr. Brown, go ahead; the item that you asked about earlier.

Mr. Michael A. Brown: I move that the following section be added after section 78 of the Mining Act, as set out in section 40 of the bill:

“Application

“78.0.1 Sections 78.1, 78.2, 78.3 and 78.4 apply in accordance with the regulations.”

The Chair (Mr. David Orazietti): Any further comments? Mr. Bisson.

Mr. Gilles Bisson: C'est quoi, ça?

Mr. Michael A. Brown: This provision gives the government the flexibility to phase in exploration plans and permits should it be required. In other words, we don't have to do the whole thing at once.

Mr. Gilles Bisson: Can you just give me a second to get my head around that one? Explain that again.

The Chair (Mr. David Orazietti): Sorry, Mr. Bisson; it's now 5 o'clock—

Mr. Gilles Bisson: Oh, sorry, so I ran out of time. I can't my head around it.

Interjections.

The Chair (Mr. David Orazietti): As part of the order of the House, we're going to be voting on the motions that are before us now without debate.

Government motion number 21: All those in favour? Opposed? The motion is carried.

Those are all of the motions that have been put forward in section 40. Shall section 40, as amended, carry? All those in favour? Opposed? Section 40 is carried.

Section 41: There are no amendments. Shall section 41 carry? Opposed? Section 41 is carried.

Government motion number 31.

Interjection.

The Chair (Mr. David Orazietti): So that we're clear on what's in the package: government motion number 31, subsection 42(1) of the bill, subsection 81(2) of the Mining Act. All those in favour? Opposed? The motion is carried. That's 31.

Shall section 42, as amended, carry? All those in favour? That's carried.

Section 43: There are no amendments. Shall section 43 carry? Opposed? Section 43 is carried.

Government motion number 32 on section 44, section 44 of the bill, section 83 of the Mining Act: All those in favour of government motion number 32? Opposed? Carried.

Shall section 44, as amended, carry? Carried.

Sections 45 and 46: There are no amendments in those sections. Shall they carry? Carried.

Section 47: government notice. Shall section 47 carry? All those in favour of section 47? Opposed? It's lost.

Sections 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57: There are no amendments. Shall they carry? All those in favour? Opposed? It's carried.

Conservative motion 32.1: The amendment is out of order. According to the standing orders, the section is not open, so I'm ruling the amendment out of order.

Shall section 57 carry? Carried.

Section 58, government motion number 33—

Mr. John Yakabuski: Was this one ruled out of order?

The Chair (Mr. David Orazietti): Yes.

Mr. John Yakabuski: How come?

The Chair (Mr. David Orazietti): According to the standing orders, the amendment is an attempt to repeal a section of the Mining Act that is not open in the bill. So the amendment is out of order.

Mr. John Yakabuski: We're down to one here.

The Chair (Mr. David Orazietti): Government motion number 33: section 58 of the bill, subsection 140(2) of the Mining Act. All those in favour? Opposed? It's carried.

Government motion number 34: section 58 of the bill, subsection 141(2) of the Mining Act. All those in favour? Opposed? Government motion 34 is carried.

Shall section 58, as amended, carry? All those in favour? Opposed? That's carried.

Section 59: no amendments. Shall it carry? Opposed? It's carried.

NDP new section 59.1: That's NDP motion number 34.1. Again, according to the standing orders, this section is not open, so the amendment is out of order.

Shall section 59 carry? All those in favour? Carried.

Section 60: There are no amendments. Shall section 60 carry? Carried.

Section 60.1, which is Conservative motion 34.2: Again, according to the standing orders, this amendment is an attempt to amend or repeal a section of the Mining Act which is not open to—

Interjection.

The Chair (Mr. David Orazietti): That's right, so it's out of order.

Mr. John Yakabuski: Thank you very much.

The Chair (Mr. David Orazietti): You're welcome. Section 61: There are no amendments; sections 62, 63, 64, 65, 66, 67, 68, 69, 70 and 71. Shall those sections carry? Carried.

Government motion number 35: section 72 of the bill, section 156 of the Mining Act. Shall it carry? Carried.

Government motion number 36: section 72 of the bill, section 157 of the Mining Act. Shall it carry? Carried.

Government motion number 37: section 72 of the bill, subsection 158(1) of the Mining Act. Shall it carry? Opposed? Carried.

Government motion 38: section 72 of the bill, clause 158(1)(b) of the Mining Act. Shall it carry?

Mr. John Yakabuski: Chair, is Trevor able to keep up?

The Chair (Mr. David Orazietti): He's doing just fine. Thank you very much for your concern.

Government motion number 39: section 72 of the bill, subsection 158(1) of the Mining Act. Shall it carry? Carried.

Government motion number 40: section 72 of the bill, subsection 158(3) of the Mining Act. Shall it carry? Opposed? Carried.

Government motion number 41: section 72 of the bill, subsection 158(4) of the Mining Act. Shall it carry? Carried.

1710

Motion 42R, a replacement motion 42: section 72 of the bill, subsection 158(5) of the Mining Act. Shall it carry?

Mr. Michael A. Brown: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for. That one will be just deferred until the end of voting.

Mr. Gilles Bisson: Deferred?

The Chair (Mr. David Orazietti): Yes, for a recorded vote.

Government motion 43: section 72 of the bill, subsection 158(11) of the Mining Act. Carried?

We'll need to wait to move that section, as amended, until we do the recorded vote at the end, so we'll just wait on that section.

Sections 73, 74, 75, 76, 77, 78 and 79: Shall those sections carry? Carried.

Government motion 44: section 80 of the bill, subsection 170.1(2) of the Mining Act. Shall it carry? Opposed? It's carried.

NDP motion 45R—

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): A recorded vote has been called for it, so again we'll get to that at the end.

Mr. John Yakabuski: Is that 45R that's a recorded vote?

The Chair (Mr. David Orazietti): That's right. Are you going to be removing 45, though?

Mr. Gilles Bisson: No, 45R will be the vote.

The Chair (Mr. David Orazietti): Are you going to remove it?

Mr. Gilles Bisson: I couldn't hear the—

The Chair (Mr. David Orazietti): No, remove it or you're going to move the section.

Mr. Gilles Bisson: I want 45R to be a recorded vote. But 45 is out, because the other one is replaced.

The Chair (Mr. David Orazietti): Right, thank you.

Government motion number 46: section 80 of the bill, section 170.1 of the Mining Act. Opposed? Okay, that's carried.

We'll come back to section 80.

New section: proposed NDP motion 46.1.

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): Recorded vote. All right; 46.2, a new section—

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): Okay. We'll come back to that.

We're down to section—

Interjection.

The Chair (Mr. David Orazietti): We'll vote on that.

Section 81: no amendments. All those in favour, section 81? Opposed? It's carried.

Section 82, government motion number 47: subsection 82(9) of the bill. All those in favour, government motion? Opposed? It's carried.

NDP motion 47.1: All those in favour? Opposed? Okay, the motion is lost.

NDP motion number 48: All those in favour? Opposed? The motion is lost.

NDP motion number 49: All those in favour? Opposed? The motion is lost.

Shall section 82, as amended, carry? Opposed? Okay, the section is carried.

Section 83: no amendments. Shall section 83 carry? Opposed? Okay, that's carried.

Section 84: government motion 50, section 84 of the bill, section 178.2 of the Mining Act. Shall that motion carry? Opposed? It's carried.

Shall section 84, as amended, carry? Carried.

Government motion—new section. Amendment 51: All those in favour? Opposed? That's carried.

Sections 85, 86, 87, 88 and 89: There are no amendments. Shall they carry? Carried.

Government motion 52: subsection 90(2) of the bill, subsection 189(1.2) of the Mining Act. Shall the motion carry? Carried.

Shall section 90, as amended, carry? Carried.

Sections 92, 93, 94, 95, 96—

Interjection.

The Chair (Mr. David Orazietti): I'm sorry; 91 through to and including section 99: There are no amendments. Shall they carry? Opposed? Carried.

Government motion number 53: section 100 of the bill, subsection 204(1) of the Mining Act. Shall the motion carry? Carried.

NDP motion number 54.

Mr. Gilles Bisson: Recorded vote.

The Chair (Mr. David Orazietti): Okay, a recorded vote has been called for.

Government motion 55R, a replacement motion: All those in favour? Opposed? The motion is carried.

We'll have to come back to section 100.

Section 101, government motion 56: subsection 101(4) of the bill, subsection 81(13) of the Mining Act. Shall it carry? Carried.

Shall section 101, as amended, carry? Carried.

Section 102: government motion number 57, subsection 102(2) of the bill. Shall the motion carry? Carried.

Shall section 102, as amended, carry? Carried.

Shall section 103 carry? Carried.

Lets go back to the recorded votes, starting with section 72, government motion 42R, replacement.

Ayes

Albanese, Brown, Kular, Jeffrey, Mangat.

Nays

Bisson, Martiniuk.

The Chair (Mr. David Orazietti): The motion is lost. Shall section 72, as amended, carry? Carried. Section 80: 45R, NDP motion. Recorded vote.

Ayes

Bisson.

Nays

Albanese, Brown, Kular, Jeffrey, Mangat, Martiniuk.

The Chair (Mr. David Orazietti): The motion is lost. Shall section 80, as amended, carry? Carried.

New section: NDP motion 46.1, on section 80.2. A recorded vote has been called for.

Ayes

Bisson.

Nays

Albanese, Brown, Kular, Jeffrey, Mangat.

The Chair (Mr. David Orazietti): The motion is lost. New section: NDP motion 46.2, section 80.3. A recorded vote was called for.

Ayes

Bisson.

Nays

Albanese, Brown, Kular, Jeffrey, Mangat.

The Chair (Mr. David Orazietti): The motion is lost. Section 100: NDP motion number 54. A recorded vote was called for.

Ayes

Bisson.

Nays

Albanese, Brown, Kular, Jeffrey, Mangat, Martiniuk.

The Chair (Mr. David Orazietti): The motion is lost. Shall section 100, as amended, carry? Carried. Shall the title of the bill carry? Carried. Shall Bill 173, as amended, carry? Carried. Shall I report the bill, as amended, to the House? Carried.

Thank you. Committee is adjourned.

The committee adjourned at 1716.

CONTENTS

Wednesday 7 October 2009

**Mining Amendment Act, 2009, Bill 173, *Mr. Gravelle* / **Loi de 2009 modifiant la Loi
sur les mines, projet de loi 173, *M. Gravelle*..... G-1089****

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Laurel C. Broten (Etobicoke–Lakeshore L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mrs. Laura Albanese (York South–Weston / York-Sud–Weston L)

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Michael A. Brown (Algoma–Manitoulin L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Mr. Gerry Martiniuk (Cambridge PC)

Also taking part / Autres participants et participantes

Ms. Catherine Wyatt, legal counsel,

Ministry of Northern Development, Mines and Forestry

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Catherine Oh, legislative counsel



G-44

G-44

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature



Official Report of Debates (Hansard)

Monday 19 October 2009

Journal des débats (Hansard)

Lundi 19 octobre 2009

Standing Committee on General Government

Far North Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 sur le Grand Nord

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 19 October 2009

Lundi 19 octobre 2009

The committee met at 1401 in room 151.

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

The Vice-Chair (Ms. Helena Jaczek): Ladies and gentlemen, welcome to the Standing Committee on General Government. We're here for clause-by-clause consideration of Bill 191, An Act with respect to land use planning and protection in the Far North.

There are no amendments to section 1. Is there any debate? Monsieur Bisson.

Mr. Gilles Bisson: I just wanted, for the record, just to very quickly put down that, clearly, there isn't a buy-in on the part of First Nations on this legislation.

I know the parliamentary assistant and others would have had the same conversations that I've had with various tribal organizations and First Nations communities. Generally, they support the intent of what the bill is trying to do, and this is really the frustrating part for First Nations, that organizations such as NAN, Mushkegowuk Tribal Council, Attawapiskat First Nation and others are, in general, in favour of having some sort of a planning regime, but it has to be a planning regime that they themselves have a say about how it is to be developed, what it's to look like and how it's to function.

They feel that this bill, at this point, does not deal with those concerns. They've asked me to convey to this committee that they're unhappy with the government's decision to go forward without their agreement. They feel that's regrettable because, given time, I think we probably—I agree with them—could get a better product. Just for the record, there are a number of amendments that I would have normally tabled that I'm not tabling at the request of First Nations, as they're saying they're not buying into this particular process at this point.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Orazietti.

Mr. David Orazietti: For the record, we received the NDP amendments on Friday and are going through those, and have gone through them, and we have a response. But I think it's fairly clear that our commitment on the government's side to continue to work with First Nations

and consult them to ensure that they are a very active part of the process has been made clear. The bill went out for hearings prior and will go out for hearings again following second reading. I think the government's commitment is one that we do this in partnership with First Nations.

First Nations, as you know, have a number of agreements with the province to date for land use planning and development. The committee was out and did hear many of the concerns and the issues that were raised by First Nations, and will continue, through the next round of hearings that will take place, to engage First Nations and ensure that their views are incorporated into any bill that would go forward and be passed before the Ontario Legislature. I think we're continuing to do that, and I think Mr. Bisson recognized that over the last number of years there have been efforts made and continue to be efforts made by the government to engage First Nations in a way that they have not been in the past, as part of active land use planning.

We know there's more to do. We recognize that and we want to hear your constructive comments as we shape this legislation going forward, from everyone and from all members in the Legislature, quite frankly. I look forward to the discussion around the amendments that have been put forward, and there are a number of government amendments as well. Again, we'll be back out for hearings and for further consultation, which, as I think everyone knows, it's not always the case that there are a series of consultations between each reading of the bill in the Legislature. That's not normally the way the process unfolds, as many members know, and I think we're certainly making the extra effort with respect to this bill to ensure that we get this right. We'll leave it at that.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Hillier.

Mr. Randy Hillier: I'd like to speak to this as well. Like the member from the third party, I want to be on record as opposing this.

I think it's clear to everybody who attended the committee hearings that there was significant opposition to Bill 191. The members of the First Nations went so far as to say that they would not recognize the authority of Bill 191. It's nice to hear the government side talking now about engaging the First Nations, but they weren't engaged even at the start of this bill. That was evident as well, through the discussions at the committee, that none of them were consulted with the introduction of this bill.

It's also clear that the whole concept has got significant difficulties. Making amendments to a flawed concept doesn't change the flawed concept. It may make it a little bit less bad, or a little bit less worse, but the concept is still disagreeable.

We've heard everybody—prospectors, developers, communities, First Nations; everybody was opposed to Bill 191 during our committee hearings, other than some people who represent some environmental groups or some environmental zealots. That's not the way legislation ought to be crafted, to benefit one group at the expense of others.

It's interesting to see that even in the *National Post* on Saturday, one of the columnists—well, I'll read one sentence: "Every now and then a province falls into the hands of blundering politicians so inept that their government ends up deserving of the title 'Canada's Worst Government.'" He of course was talking about Bill 191 and this present government.

I would like to see this committee withdraw from deliberations, withdraw from clause-by-clause on Bill 191, actually begin to engage in honest discussions with the residents of the north, and come back to the House with a document, with a piece of legislation, that actually represents the interests and the concerns and takes them into consideration, in a new bill about the far north.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: I appreciate the comments from the parliamentary assistant. Yes, it's true, the government has sent this bill into committee at first reading, which happens from time to time when we're trying to canvass a little bit more broadly than normal, and I give the government some credit for that.

But after having heard all of the depositions that we've heard—and I thought Chapleau was particularly poignant, when the assembly of the NAN conference showed up in large numbers, and there were chiefs there from almost every community in NAN territory who said very clearly to this government, "Do not go forward." They couldn't have been any more clear.

Again, I just want, for the record, to be clear: The First Nations want a land use planning process. That's not the issue here. They clearly want a land use planning process because none exists now. We've had to go through the experience of, for example, the Victor diamond mine; we see Platinex up at KI; we see Musselwhite. We've seen different projects go forward where there has not been a land use planning process and we've seen how bad that could be, as far as what we saw with Platinex and KI.

On the other hand, we've seen what happened with De Beers, where they started up the Victor diamond mine but the only reason that project went forward was because De Beers said at the beginning, "We're not going forward unless there's a ratification from the community." So even De Beers—you know?

Let's put this in context. De Beers in Canada has a good history but in South Africa certainly was not known as a corporation that had a stellar reputation when it came

to the treatment of human rights. But it's understood that if you're going to come to do business in Canada and you're going to try to establish a mine where there is no land use planning process, in a territory that has virtually no development, you can't go forward unless you get a local buy-in.

By God, if De Beers gets it, what's wrong with us? De Beers understands that you have to have a buy-in from the local communities. Why are we, as a Legislature, not recognizing that we need to do the same?

1410

I give the government some credit. I don't want to say that you guys are doing this all wrong, because that wouldn't be fair. In fairness, you tried to draft a bill that you thought, with the best advice that you sought through your bureaucracy, your parliamentary assistant and your ministers—you have come together with a bill that you thought would be satisfactory to First Nations. It is clear it is not.

I support Mr. Hillier's position that what this committee should do is charge the ministry to go back, sit down with First Nations and have a discussion about how the land use planning process is going to work in the far north. There is going to be one; we all accept that; we think that's a great idea; give the government some credit for trying to do it, but this doesn't cut it.

For us to sit here today and the parliamentary assistant to tell us, "Don't worry. This is only first reading. We'll get it right by second reading"—I've seen that picture before, and so have First Nations, and that's why they're asking us to put a hold on this.

Just the last point I would make: I hear your comments, Parliamentary Assistant, in regard to this government having tried to consult with First Nations and deal with First Nations in a different way. I'll give you some credit for saying those things, but I look at the reality of what exists in those communities. They're still the most impoverished communities in Ontario. They still have policing that doesn't work. They still have social services that don't work. They still have 20 people in a house. They can't even build schools in most of those communities that are abandoned because of mould, diesel spills and everything, and you've got a federal government that, quite frankly, doesn't give two hoots. If the federal government doesn't give two hoots, I think the province should.

On that basis, I just think we should go back to the drawing board.

The Acting Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: I hear your comments and I appreciate the input that you have to offer today as a member who represents a riding in northern Ontario and has seen some of those things first-hand. You're right; I'm not going to comment on the federal government's responsibility to First Nations. Those indicators and things that you've just referenced, I think we all know, are not a very positive story when it comes to First Nations communities, and more needs to be done.

When we came to government, we were spending \$3 million on First Nation education programs in Ontario. Today, we're spending \$28 million on those types of programs. Regardless of what the federal government does, we know that First Nations are Ontario residents as well, and we're going to continue to do everything we can to support them.

I need to hear more substance around what specifically the challenges are in the bill with the land use planning, because I think you're right: First Nations do want a land use plan in place. It's going to create certainty for both First Nations and for industry. So, to say, "Let's just scrap the bill and let's not have a process," or, "Let's not move forward"—I think we all know that we need a process. We need legislation in place that helps define and set some parameters both for the industry, exploration, mining, forestry and also so that First Nations can themselves be engaged in land use planning, as they are the ones who live in this region of the province predominantly.

I think we need to get a process in place. We need legislation passed in this regard, and I think the engagement that has taken place to date has been positive. It's obviously a work in progress where we will continue to engage First Nations.

Some of the references to committees and discussions with the province going forward on developing their land use planning are things that aren't going to happen overnight. We know it's going to take some time for effective community land use planning to take place in many of these communities, and it will continue to be a dialogue, regardless of who the government is in the province of Ontario, with First Nations. But we believe that this is a process that needs to be started.

Down the road, at some point, some other government may have the opportunity to engage First Nations in the way they see fit, but I think we all understand that the First Nations in the province of Ontario, especially in the far north, have a huge interest in the development and planning of their own communities and, to date, I don't think they have really been partners in that process.

You've referenced a couple of examples where industry will be present in these communities or will seek to open mines, geological exploration or whatever it might be, and it's done with perhaps some challenges where they could otherwise be avoided if legislation were in place and there were more adequate land use planning. I think we all know that NAN and the chiefs of northern Ontario and those signatories to 5 and 9 want to ensure that they have a say in their land use planning.

So, respectfully, I hear your comments, but I think the bill has a fair bit of substance to it. I know that there are some issues that we need to continue to talk about, and that's the other reason why we're going to continue to go out for hearings following second reading of the bill. I think we need to deal with the amendments that are in front of us and continue to keep the lines of communication open with our First Nations partners, so that we can continue to shape the land use planning that will take

place in northern Ontario in the interests of everyone in the province and, in particular, in the interests of the First Nations who predominantly live in the far north.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Hillier.

Mr. Randy Hillier: I'll just add this: We're in clause-by-clause right now, and one of the key stakeholders in this whole discussion refuses to put in any amendments because they believe this bill is so flawed. They're not engaging the government or the opposition or anyone with amendments because this bill is so bad. To go through a clause-by-clause process when the key stakeholders are not participants in it is not going to improve the bill in any fashion. That is why I would like to table a motion that this committee suspend deliberations and suspend clause-by-clause reading until there are those honest further discussions with the First Nations as well as other northern residents and we engage them in those honest discussions so that a bill that represents the interests of the people of the north can be tabled and so that we will have the residents participating in this democracy instead of being excluded.

So I would like to put that on the record: a motion to suspend deliberations and clause-by-clause reading until the government does further discussions.

The Vice-Chair (Ms. Helena Jaczek): We do have a motion on the floor at the present time. Are you asking that we actually adjourn the committee?

Mr. Randy Hillier: Yes. My motion would be that this committee adjourn and ask the government to withdraw this bill, Bill 191, pending further honest discussions with northern residents.

Mr. Gilles Bisson: Can I be helpful? It's not so much that the committee adjourn, because there's other business this committee can deal with; it would be that this particular bill be put on hold until such time as there is a discussion with First Nations and there is agreement as to what this bill should look like.

The Vice-Chair (Ms. Helena Jaczek): Are we asking for the debate on section 1 to be adjourned?

Mr. Gilles Bisson: We are doing that, and I second the motion.

Mr. David Oraziotti: The government is not going to support a motion for the adjournment of the committee or to put this bill aside to deal with that. Quite frankly, if the member has amendments that he would like to bring forward after having discussions with the First Nations, I'm happy to see those. I don't know if any of your amendments reflect those discussions that you believe need to be incorporated with respect to the views of First Nations. We have consulted with First Nations; we're confident that we've done that. Our amendments that are put forward do reflect discussions that have taken place with the First Nations, and they're incorporated into the bill. We'd like to proceed, so we won't be supporting the motion.

The Vice-Chair (Ms. Helena Jaczek): I understand that there's no debate on a motion to adjourn debate.

Mr. Gilles Bisson: On section 1—I will move to the actual motion—the government says that they've had

discussions with First Nations, and that if we have amendments to give in order to strengthen the bill, we should bring them forward. The reality is, and you know as well as I do, that the First Nations are still trying to come to terms with this whole issue.

They have been living on the land for over 2,000 years, and they managed to do fairly well until we showed up. We've had an impact on them for the last hundred-plus years, and we're saying, "Well, absolutely, at this time in September, October, November 2009, you're going to put a land use planning process in place."

It doesn't work that way, and you know as well I do that there is a whole different set of realities when it comes to how First Nations deal with and come to terms with policy when it comes to affecting First Nations. Tribal councils themselves do not speak for individual First Nations communities. First Nations are autonomous to themselves—and yes, they work with each other through their tribal councils. But there needs to be a process of being able to go back into the First Nations, driven by First Nations themselves, so that they're able to say, "Here's the product that we want in the end."

I would move that we do adjournment of this section.

The Vice-Chair (Ms. Helena Jaczek): Is it the pleasure of the committee that the motion for adjournment of the debate—

Mr. Gilles Bisson: Recorded vote.

The Vice-Chair (Ms. Helena Jaczek): A recorded vote, Mr. Clerk.

Mr. Gilles Bisson: And I request 20 minutes—

The Vice-Chair (Ms. Helena Jaczek): So it's a 20-minute recess. That means that we will return at 2:40.

The committee recessed from 1420 to 1440.

The Vice-Chair (Ms. Helena Jaczek): Ladies and gentlemen, we are resuming with a recorded vote on a motion by Monsieur Bisson to adjourn debate on section 1.

Ayes

Bisson, Hillier, Ouellette.

Nays

Jeffrey, Kular, Mangat, Moridi, Oraziatti.

The Vice-Chair (Ms. Helena Jaczek): The motion is lost.

Resuming debate on section 1: Further debate on section 1?

Shall section 1 carry? All those in favour, please raise your hand. All those opposed? That motion is carried.

Moving to section 2, we have PC amendment 0.1. Mr. Ouellette?

Mr. Jerry J. Ouellette: I move that the definition of "far north" in section 2 of the bill be struck out and the following substituted:

"'far north' means the portion of Ontario that lies north of the land consisting of,

"(a) Woodland Caribou Provincial Park,

"(b) the following management units designated under section 7 of the Crown Forest Sustainability Act, 1994, as of May 1, 2009: Red Lake Forest, Trout Lake Forest, Lac Seul Forest and Caribou Forest,

"(c) Wabakimi Provincial Park, and

"(d) the following management units designated under section 7 of the Crown Forest Sustainability Act, 1994, as of May 1, 2009: Ogoki Forest, Kenogami Forest, Hearst Forest, Gordon Cosens Forest and Cochrane-Moose River; ('Grand Nord')"

The Vice-Chair (Ms. Helena Jaczek): Would you like to make a few comments, Mr. Ouellette?

Mr. Jerry J. Ouellette: This is just essentially designed to give some clear definition as to what exactly the far north is. There is a lot of concern being expressed by groups and organizations out there about where it is and how we define exactly where it is. The intent is to give some very specific boundary lines so that people get a clear understanding of where those areas are.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Oraziatti.

Mr. David Oraziatti: I appreciate the amendment. Although I understand what is being requested, within the bill currently the geographic area is outlined. As well, the more specific aspects or more detailed boundaries will be identified in regulation and that's consistent with the Lake Simcoe Protection Act, 2008. That would be a recent example of where the more specific boundaries were determined by regulation as opposed to in the bill.

I understand where you're coming from. I think the concern might be around the government changing those boundaries. I think the boundaries are fairly clear within the legislation at present and further detail would be added with regard to the regulations that will be put forward in the bill.

I guess I can add, for the interest of members, a map of the far north boundary is currently on the Ministry of Natural Resources' website for anyone to review.

So I think it's clear in the bill and further specifics will be identified within the regulation.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Bisson.

Mr. Gilles Bisson: Just to my colleague Mr. Ouellette: So you're replacing, under definitions in section 2, "far north." As I read it, the only difference is in clause (d) it says "Grand Nord." So explain to me. I just want to follow your logic here.

Mr. Jerry J. Ouellette: The parliamentary assistant just stated that there would be more clear and specified definitions under regulation. The difficulty is, under regulation, we have no ability to discuss that here; it's done at a different level. Whereas, once it is defined in the legislation, we have it very clearly laid out.

Mr. Gilles Bisson: How is this different than what's in there now? All I see that's different are the words "Grand Nord." I look at your new definition of "far north" and unless I'm looking at the wrong section of the bill, it reads exactly as what's in the bill now.

Mr. Jerry J. Ouellette: Hang on.

Mr. Gilles Bisson: Except it says (a), (b), (c) and (d) rather than (i), (ii), (iii) and (iv).

Mr. Jerry J. Ouellette: Yes.

The Vice-Chair (Ms. Helena Jaczek): I think legislative counsel would like to jump in here.

Mr. Gilles Bisson: We're under "Definitions," aren't we?

Mr. Michael Wood: Yes. Michael Wood, legislative counsel. I can answer that question in part. Mr. Bisson, you're correct that the substance of clause (a) of the definition is repeated in the motion. What is not in the motion is clause (b). That removes the ability to make regulations to more specifically define the area, so you are tied exactly to that area. You don't have the ability, by regulation, to depart from it in any way whatsoever.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Bisson.

Mr. Gilles Bisson: Again, I must be looking at the wrong section of the bill—"(b) the following management units designated under section 7 ..." is the same as subclause (ii) under "far north." It says the same thing. The language is no different.

Mr. Michael Wood: There is a clause (b) to the definition of "far north" in section 2 of the bill, which is missing from the motion.

Mr. Gilles Bisson: Oh, you're pulling (b) out. That's what it is.

Mr. Michael Wood: That is correct.

Mr. Gilles Bisson: Got it. I was looking at the amendment. Okay.

The Vice-Chair (Ms. Helena Jaczek): Further debate on PC motion 0.1?

Mr. Gilles Bisson: So the effectiveness would be to set it in legislation and not in regulation?

The Vice-Chair (Ms. Helena Jaczek): Further debate? Shall PC—

Mr. Gilles Bisson: I'd like to think about this just for a second, if somebody wants to talk.

The Vice-Chair (Ms. Helena Jaczek): Any further comments?

Mr. David Oraziotti: I think we made our comments. They'll be more specifically delineated in regulation or in the bill. We're satisfied with the wording, so we won't be supporting the amendment.

The Vice-Chair (Ms. Helena Jaczek): Shall PC motion—

Mr. Gilles Bisson: Whoa, whoa, whoa. You're just a little bit too quick. We're going to get the previous Chair in here pretty quickly if you continue that. That was a compliment, by the way, to our former Chair.

Mr. David Oraziotti: I think the Chair is doing a fantastic job, Mr. Bisson.

Mr. Gilles Bisson: No, you're doing a great job. No, she's doing all right. I'm just having fun with her.

Effectively, what could happen under the current definition, if I understand it correctly, is that cabinet could decide, in order to expand the area that is covered by the far north planning act—other than just gazetting the public, that's the only way that we would know. So why would you want to do that, Mr. Parliamentary

Assistant? Why would you want to give cabinet the ability to expand the area under this bill rather than keep it in legislation?

Mr. David Oraziotti: With respect to the amendment that has been put forward, we're satisfied that the definition or the outline of the boundary for the far north is incorporated in the bill and that further specifics of the boundaries will be identified in regulation.

I think the concern, and correct me if I'm wrong, is around the boundary perhaps being changed or not being specified to the level of what's being proposed in the amendment. But I think that it's addressed in the bill. The boundaries of the far north are fairly clear in the bill, and further, through regulation, specifics of the boundaries can be identified. I think the concern around the government moving or adjusting those boundaries to either make the area larger or smaller is really a moot point.

I'm satisfied with the way it's written in the bill and the government is as well, so we're not going to be supporting the amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Jerry J. Ouellette: Just so people understand, in clause (b), the area, if any, that is set out in regulations made under this act—as opposition members, we have zero input, as do the current sitting members, unless a PA is invited in, on the regulations, and that is done exclusively beyond them.

The only thing that we're trying to do, when we're dealing with this issue, is to have some clarity as to where it's going to be, particularly with the 225,000-hectare section as not being defined. Those parameters and boundaries may change, and it makes it very difficult for the opposition to know exactly where it is. All I was trying to do was say, "That's where it is. Now we know, and that part won't change."

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Bisson.

Mr. Gilles Bisson: Again, what could happen under this clause (b) would be, in the future, a cabinet could say, "Here's an area we've protected. Maybe there's something there. Let's unprotect it." That could happen, in the way that I read this, and/or you could come at it the other way, where a future cabinet could decide to expand the area covered by the act.

From both the environmental community and from the First Nations community, and from just, I think, the Ontario public generally, do we really want that, or is it better to have clarity at the beginning? We know what areas we're talking about—it's the areas described in the bill—and there's no changing of the areas that could be protected under the act.

Who knows what a future cabinet will do? It might be a moot point. You might be right; maybe no cabinet will ever do anything. On the other hand, a cabinet may decide to do something.

1450

The Vice-Chair (Ms. Helena Jaczek): Further debate? Further comments on PC motion 0.1? Shall PC motion 0.1 carry? Thank you. That motion—

Mr. David Orazietti: All those opposed?

The Vice-Chair (Ms. Helena Jaczek): Oh, all those opposed?

Interjections.

The Vice-Chair (Ms. Helena Jaczek): All those in favour of PC motion 0.1, please raise your hand. All those opposed?

Interjection.

The Vice-Chair (Ms. Helena Jaczek): We need to hear both sides, Mr. Bisson.

That motion is lost.

Government motion 1. Mr. Orazietti?

Mr. David Orazietti: Mrs. Jeffrey's going to read the government motion.

The Vice-Chair (Ms. Helena Jaczek): Mrs. Jeffrey?

Mrs. Linda Jeffrey: I move that the definition of "protected area" in section 2 of the bill be amended by striking out "clause 8(8)(b)" and substituting "clause 8(8)(c)".

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Orazietti: This is no more than a house-keeping item. There are a number of them in the bill that reflect technical amendment changes to reflect the correct sections and numbers in the bill. It's a technical amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: No, it makes one heck of a difference. Your argument is you meant to say (c), but what you wrote is (b). That's the long and the short of the story.

Mr. David Orazietti: Correct.

Mr. Gilles Bisson: Okay.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Those in favour of government amendment 1? Those opposed? That's carried.

Moving to NDP amendment 1.1.

Mr. Gilles Bisson: I move that section 2 of the bill be amended by adding the following definition:

"'Commission' means the far north land use planning commission established under section 6.1;"

This is fairly straightforward because if you take a look at section 6.1 a little bit further on, we define in there how the planning commission is to be constituted, and it comes back to the point that I was trying to make earlier on. First Nations really feel that the way this bill is going, they're really not going to have any real control about what happens in their traditional territories. What we're attempting to do here is at the very least try to put some substance to the authority that First Nations would have when it comes to their actual ability to do land use planning.

We'll be dealing with this later on in section 6 of the bill, but this is just the definition part of "commission."

The Vice-Chair (Ms. Helena Jaczek): Any further comments or further debate? Yes, Mr. Orazietti.

Mr. David Orazietti: I certainly understand the proposed amendment here that the member has put forward.

I think there are some fundamental challenges in it, and they are in unilaterally imposing a body through legislation that we propose that First Nations would be part of—

Mr. Gilles Bisson: I didn't hear the last part, sorry.

Mr. David Orazietti: That we would create unilaterally a commission that we would require the First Nations to be a part of. Although the intent of the motion is positive in nature, I think it's something that we can't support because we have proposed in the bill a process that goes forward where there's engagement with First Nations as opposed to the establishment of a commission. We can't support that.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: Obviously, I'm going to have to lose the amendment, but it's pretty straightforward. It basically says that the First Nations—when you end up at the end of 6.1, if we adopt what's in 6.1 after the definitions section, yes, it would clearly establish who is on that commission, and clearly we're saying it's members of the First Nations and representatives of the government of Ontario. They would then have the responsibility for much of what would be in this act. It's to give First Nations the comfort that they're seeking when it comes to being able to have a say on what happens on their traditional territories.

I'd ask for a recorded vote.

The Vice-Chair (Ms. Helena Jaczek): Is there any further comment on NDP motion 1.1?

Ayes

Bisson, Ouellette.

Nays

Jeffrey, Kular, Mangat, Moridi, Orazietti.

The Vice-Chair (Ms. Helena Jaczek): The motion is lost.

Those in favour of section 2, as amended? Please raise your hands, those in favour of section 2, as amended. Those opposed?

Section 2, as amended, is carried.

We have no amendments in section 3, section 4, section 5. Shall sections 3 through 5 be carried? Those sections are carried.

Mr. Gilles Bisson: We could have a discussion. Next time; I'll let you get away with it this time.

The Vice-Chair (Ms. Helena Jaczek): Moving on to section 6, government motion 2. Mr. Orazietti?

Mr. David Orazietti: Ms. Jeffrey's going to be reading that one. Thank you.

The Vice-Chair (Ms. Helena Jaczek): Mrs. Jeffrey.

Mrs. Linda Jeffrey: I move that paragraph 2 of section 6 of the bill be amended by adding "designated in community based land use plans" at the end.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Any further debate on government motion 2?

All those in favour? Those opposed? That motion is carried.

NDP motion 2.0.1.

Mr. Gilles Bisson: It's withdrawn.

The Vice-Chair (Ms. Helena Jaczek): It's withdrawn?

Moving to PC motion 2.1.

Mr. Jerry J. Ouellette: I move that paragraph 4 of section 6 of the bill be amended by adding "and other residents of Ontario" at the end.

The Vice-Chair (Ms. Helena Jaczek): Some comments, Mr. Ouellette?

Mr. Jerry J. Ouellette: Yes, this is just trying to be inclusive. We heard very clearly that there were a number of organizations that made presentations that wanted to be part of the entire process, including the Metis organizations that presented as well as non-status First Nation communities.

What this allows for is, by adding "and other residents of Ontario," it ensures that other groups that wish to participate are given the particular opportunity to do so.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Orazietti?

Mr. David Orazietti: Thank you, Madam Chair. The amendment, as it's written, causes us some concern, and I understand where the member is going, around both—it's the "and other residents of Ontario" portion.

We all recognize that, predominantly, certainly, in the far north, First Nations communities and First Nations individuals live in this part of our province. If there is a benefit that could result, or would result perhaps, from development or community land use planning in First Nations communities, I think it has the effect of benefiting all Ontarians, frankly, for that matter.

But I guess I would have a concern where, for instance, First Nations wanted to perhaps engage in a development and there was not perhaps a direct—I mean, my view is, obviously, if First Nations are improving their quality of life and there are land use plans being developed, that's good for everyone in Ontario and that's good for our province.

I guess my concern is that when you add this phrase, that that has to really benefit everyone in Ontario or the First Nations aren't really permitted to move forward with their development—that would cause me some concern. I don't know that—I could speculate, but I suspect that the First Nations communities would have some concerns around that as well.

If we have a development that they want to move forward with that doesn't necessarily have a direct benefit for the rest of Ontario, are we saying that First Nations can't move forward with those plans? Are we saying that First Nations can't proceed with what they want to do with their own community land use planning within their own communities?

To get back to the premise and the intent of the legislation, which we have heard much about here today

in terms of consideration for and engagement of First Nations in the far north, I think this amendment, to some extent, reduces unnecessarily the benefit that could be arrived at in First Nations communities directly.

1500

Although I understand where the member's coming from, I think the reality is that the bill and the intent of the bill, and the community land use planning that will result to benefit First Nations, is really a benefit to all Ontarians and does, in the spirit of the legislation, really benefit Ontario as a whole. So we're not going to be supporting this amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Monsieur Bisson.

Mr. Gilles Bisson: Oh, my God, I'm on the same side. Listen, with respect to my colleague Mr. Ouellette, I understand what you're trying to do here, and it, on the surface, sounds like a pretty innocuous thing. But from the perspective of First Nations reading the legislation, they would see that as a diminishment of their role, and I would have a hard time trying to support that on the basis of the perception that it would somehow or other lower their participation.

The other thing, as I read this, is that it's "enabling sustainable economic development that benefits the First Nations" and you're adding, "and other residents of Ontario." Well, sometimes those two things may be in conflict, and who, at the end, are we talking about? Some 99% of the people living in this territory are First Nations. There are places like Moosonee and Attawapiskat and other places where non-natives live, but even in Moosonee they're a minority, where there's the largest congregation of non-native people up in the area. So I understand what you're trying to do and I find myself a bit at odds because I'd like to support you as a colleague in opposition, but I cannot support this.

The Vice-Chair (Ms. Helena Jaczek): Comments? Mr. Ouellette.

Mr. Jerry J. Ouellette: Further to that, when you're reading that section very specifically, "enabling sustainable economic development that benefits the First Nations," for example, if hydro development were to take place in the far north and the lines were to come south, they would be benefiting people south of there, whether it's in Timmins, Cochrane or other communities. They would be a beneficiary from that aspect as well. We just want to make sure that all those who are involved in any economic development opportunities are included in the process. So, yes, the First Nations, as clearly laid out, are going to have a substantial impact on what takes place in the act; however, there will be other communities that may be benefiting from that as well that will be completely excluded from having a say and participating in any of that, even though they will be the ones, in the end, who may be receiving the economic benefit.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: Again, with all due respect, that's not the way it would be interpreted by First Nations.

Mr. Jerry J. Ouellette: I would move to amend my motion to state, then: I move that paragraph 4 of section 6 of the bill be amended by adding “and other residents of the far north.”

The Vice-Chair (Ms. Helena Jaczek): So to clarify, it will be striking out “Ontario” and replacing that with “other residents of the far north.”

Mr. Jerry J. Ouellette: Correct.

The Vice-Chair (Ms. Helena Jaczek): Debate on the amendment?

Mr. Jerry J. Ouellette: As the member mentioned, the individuals from Moosonee who are not First Nations communities would not benefit; however, they now have the ability to participate in any benefits or any programs that may take place in that area.

The Vice-Chair (Ms. Helena Jaczek): Debate on the amendment to the amendment?

Mr. Gilles Bisson: It's an interesting amendment to the amendment. I want to hear what the parliamentary assistant has to say.

The Vice-Chair (Ms. Helena Jaczek): Mr. Orazietti?

Mr. David Orazietti: I appreciate the timeliness of that most recent change in the amendment, although I think, to be consistent with the objectives in the legislation, we're really talking about the First Nations communities that we have all said here today we are concerned about making a priority in land use planning. We know of the challenges that we have had over the last number of years, or decades for that matter, in coming together with our First Nation partners in the far north and having them play a role and, frankly, lead far north planning. Although I understand the nature of the change in the amendment, to be consistent with the objectives in the bill, we're going to be rejecting the amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: I think, Mr. Ouellette, that amendment I can support, because everybody's clear that what you're trying to do in this legislation is to give First Nations—not just First Nations, but to create a land use planning process for the far north where none exists now. The reality is that 99% of people who live in the far north are First Nations, but there are others—

Mr. Jerry J. Ouellette: For now.

Mr. Gilles Bisson: For now; at this point, I'm dealing with today. But there are many non-natives who are living in places all over the far north in communities such as Moosonee, Attawapiskat and others. Why shouldn't they have an ability to participate in the process that's going to affect the territory they live in?

I know what Mr. Ouellette is doing. He's not saying we're going to give control to the non-natives, and I want you to put that on the record. If it is still the question where First Nations have some control, I don't have a problem supporting that amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate on the amendment to the amendment?

Mr. David Orazietti: Just to add a little further, the purpose statement of the bill recognizes that the view of

everyone in Ontario is important, but I think we're going to diminish the significance that we're attempting to place on the role that First Nations are going to play in this process if we do that. I don't think I can add anything further. I appreciate the amendment, but we can't support it.

The Vice-Chair (Ms. Helena Jaczek): Further debate on the amendment to the amendment?

Mr. Gilles Bisson: I'm having a bit of a problem following the logic in that one, Mr. Parliamentary Assistant, because section 6 says, “The following are objectives for land use planning in the far north,” and it spells out all of them. I'm not going to read them all, but the fourth one says that one of the objectives is “enabling sustainable economic development that benefits the First Nations and other residents of the far north.” It doesn't change the mechanism by which land use planning happens; it just states the obvious, that if you're going to build a mine in Attawapiskat, there are other people who are going to benefit. That's all it really says. It doesn't diminish the bill. I see this as a bit of a message to non-natives living in the far north that you, too, are part of the territory, and you will benefit from economic development. I think it's a reasonable amendment the way it has been rewritten.

The Vice-Chair (Ms. Helena Jaczek): Further comment on the amendment to the amendment? If not—

Mr. Gilles Bisson: Well, hang on. I've got another one.

The Vice-Chair (Ms. Helena Jaczek): Monsieur Bisson.

Mr. Gilles Bisson: I don't understand how you can have economic development in the far north and it's only going to benefit First Nations, because other people live there. I'm just waiting to hear from the parliamentary—

Mr. David Orazietti: I think I made the comment on that, and the comment is that in the purpose statement for the bill, it does reflect that we are concerned that the views of all people in Ontario, in northern Ontario, and particularly the far north, are important, and that's why you have a section in the bill where that is referenced. But we don't want to further diminish the fact that the First Nations are, as you've indicated, 99% of the population in the far north, that they make up the vast majority of individuals in the far north. That's not to say that others will not have a role in the decision-making, but again, I think in being consistent with what we're attempting to do here with the bill, we can't support the amendment. I'll leave it at that.

Mr. Gilles Bisson: I hate to make the argument for Mr. Ouellette, but that doesn't make any sense. All he's doing in section 4 is saying “enabling sustainable economic development that benefits the First Nations and other residents of the far north.” It doesn't change how the bill works; it just says one of our objectives is to build an economy in the far north that everybody can benefit by, and we're being specific for First Nations and whoever else lives there. Anyway, I think it's odd that you'd vote against it.

The Vice-Chair (Ms. Helena Jaczek): Mr. Ouellette?

Mr. Jerry J. Ouellette: I think Mr. Bisson mentioned earlier on that currently in Moosonee there is a substantial population of individuals who are not First Nations who are locating into those communities. In the event that business and other aspects are willing to invest and relocate, as mentioned by Mr. Bisson, in Attawapiskat, they need some assurance that the economic development that is going to take place is, yes, going to benefit the First Nations, but also the individuals who are willing to invest and to locate in those locations. As we move forward in time—here and now, yes, 99% are there, but who's to say that those populations won't change, in the way Moosonee has changed, years from now? I just want to make sure that is included or given the opportunity to be part of it at a later date.

The Vice-Chair (Ms. Helena Jaczek): Further comment on the amendment to the amendment?

So that everyone is clear what we will be voting on, it's the amended PC motion 2.1 that instead of saying "and other residents of Ontario" will say "and other residents of the far north."

All those in favour of the amendment to the amendment? Those opposed? The amendment to the amendment is lost.

Now we will be voting on the original PC motion 2.1.

Mr. Gilles Bisson: I want a recorded vote on that one.
1510

The Vice-Chair (Ms. Helena Jaczek): We have a recorded vote. Further debate on the original amendment, PC motion 2.1?

Mr. Gilles Bisson: I thought the parliamentary assistant made a fine case.

Ayes

Ouellette.

Nays

Bisson, Jeffrey, Kular, Mangat, Moridi, Orazietti.

The Vice-Chair (Ms. Helena Jaczek): The motion is lost.

All those in favour of section 6, as amended? All those opposed? Section 6, as amended, is carried.

Now we move to a new section, 6.1. NDP motion 2.2, Mr. Bisson.

Mr. Gilles Bisson: I move that the bill be amended by adding the following section:

"Far north land use planning commission

"6.1(1) The Lieutenant Governor in Council shall establish a commission to be known in English as the far north land use planning commission and in French as Commission d'aménagement du Grand Nord.

"Members

"(2) The commission shall be composed of the following in equal numbers:

"1. Members of First Nations.

"2. Representatives of the government of Ontario.

"Powers

"(3) The commission shall have the power,

"(a) to allocate funding of the ministry of the minister for land use planning activities under this act;

"(b) upon request, to provide assistance to First Nations in preparing a land use plan for the purposes of section 8;

"(c) upon request of parties involved in disputes on land use planning issues under section 8, to provide a process for resolving the disputes;

"(d) to make recommendations regarding interim decisions during the preparation of land use plans for the purposes of section 8;

"(e) to coordinate and provide advice on linear developments, major infrastructure and other matters that affect more than one planning area;

"(f) to develop a regional land use strategy as part of the integration of community based land use plans;

"(g) to draw on advice from advisory bodies established under section 16 in making its decisions and recommendations;

"(h) to provide a yearly report to the Lieutenant Governor in Council and First Nations on implementation of this act; and

"(i) to provide input to the minister on the periodic review of this act under section 18.1.

"Publication of report

"(4) Upon receiving the report mentioned in clause (3)(h), the Lieutenant Governor in Council shall make it available to the public for consultation."

The Vice-Chair (Ms. Helena Jaczek): Would you like to make a few comments, Mr. Bisson?

Mr. Gilles Bisson: I'd like to drink something after reading all of that. Well, I kind of know where this is going to go, because the government has already indicated that in the definitions. One of the things that has been made clear to me in discussions I've had with First Nations and also with what I've heard on committee is that First Nations are wanting some framework as to how this land use plan is going to happen and who's going to have authority and who's going to be on those commissions. So what we're trying to do is define what the commission is, what it does, what its mandate is and the composition of it.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Orazietti: If it eases the concern of the member, if you look at government motion 15, the establishment of a joint planning team—I think the amendment is positive in intent, but I think it's a bit premature in the sense that it's really calling for imposing this commission with First Nations without really having the discussion of the makeup and what they would be interested in seeing. Although we might get to some framework that is more like a commission perhaps, if you want to call it that, or with respect to our motion 15 where we're looking at the establishment of a joint planning team where we can have the discussions with

First Nations about how to proceed—I think that’s really where we need to have the conversation at this point, rather than imposing a commission where we indicate that the First Nations will be part of what we’re laying out in the legislation without having a more full consultation with them as the discussions continue to take place.

We heard from the Grand Chief of NAN during the hearings on the bill, and they’re adamant that local planning priorities are paramount in any legislation that goes forward. I’m a bit concerned about moving forward with a commission that establishes this in advance of really having those discussions. I think it’s got some merit. I just don’t think we’re there yet. So we can’t support the amendment.

The Vice-Chair (Ms. Helena Jaczek): Mr. Ouellette?

Mr. Jerry J. Ouellette: Mr. Bisson, you’re specifically stating in there “members of First Nations.” It doesn’t really list in equal numbers as to whether they’re appointed, by whom and which members of First Nations. I sometimes find that, quite frankly, bureaucracy has a tendency to select the individuals who may support certain positions when deciding who and how it comes forward. Quite possibly, an amendment that states “elected members of First Nations or appointed by the members of First Nations” would be more specific in giving you the results and ensuring that the individuals representing those communities are the ones that should be there, decided by the communities as opposed to appointed by the government.

The Vice-Chair (Ms. Helena Jaczek): Monsieur Bisson?

Mr. Gilles Bisson: I would see that as a friendly amendment. To both your points, the parliamentary assistant and Mr. Ouellette: You’re right; it’s a stab at trying to do something right, but as I said at the very beginning, we have a problem here because the key stakeholders need to be at the table designing this thing, and they’re not. That’s the issue. I think what you’re trying to do, with some credit, is trying to establish a land use planning process in the far north. I give you credit for trying to do that, but I think you’re missing the point and maybe I’m missing the point here because who we should have at the table are First Nations.

So, just bring it to a vote. I know what’s going to happen on the vote. We’re just trying to make the point here.

The Vice-Chair (Ms. Helena Jaczek): If I could just ask for a clarification, though? Was that a formal amendment that you wish to make?

Mr. Gilles Bisson: Yes, I support that.

The Vice-Chair (Ms. Helena Jaczek): Could we have it exactly the way you would propose it?

Mr. Gilles Bisson: Yes: “Members of First Nations as appointed by their own internal process.” There we go.

The Vice-Chair (Ms. Helena Jaczek): Thank you. Further debate on the amendment to the amendment?

Mr. David Oraziotti: May I make a comment on the proposed amendment to—

Mr. Gilles Bisson: The amendment.

Mr. David Oraziotti: —the amendment, yes. Again, I think it’s back to the same point. Regardless of whether it’s their elected officials, it’s still the suggestion that we’re implying that we’re going to set out who in fact will be part of that. I think that’s the discussion that we need to have so that First Nations can determine who they would like to have as part of any kind of joint planning team, which is what we’re proposing in motion 15.

That is going in the direction where we want to go, and I think that’s what we eventually want to be able to establish, but I think we need to have that conversation with them first. So, with all due respect, we can’t support the amendment or the original amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate on the amendment to the amendment?

Mr. Gilles Bisson: The last point is exactly what we’re trying to say, that we’re really needing to have a very serious discussion with First Nations and have them in the driver’s seat as we design this legislation because they know best what should be happening on their traditional territories and they should be fully engaged in this process, and I feel that is not being done.

The Vice-Chair (Ms. Helena Jaczek): Further debate on the amendment to the amendment?

Just so we’re clear then, the amendment to NDP motion 2.2 now reads, under subsection (2)1, “Members of First Nations as appointed by their own internal process.” All those in favour of the amendment to the amendment? All those opposed to the amendment to the amendment? That is lost.

Now going to back to the original NDP motion 2.2. Further debate on that amendment?

All those in favour of NDP motion 2.2? All those opposed? That is lost.

Moving to section 7, we have NDP motion 2.3. Monsieur Bisson.

Mr. Gilles Bisson: I move that subsection 7(1) of the bill be amended by adding at the end “within six months of the day on which this subsection comes into force”.

It’s pretty clear and straightforward. We’re just trying to put some timelines on it so that we’re working towards a target.

1520

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Oraziotti.

Mr. David Oraziotti: With respect to the amendment, the expectation here with respect to technical guidelines being established and mapping information policy statements, the timeline, I think, is somewhat unattainable, if you will, within six months. To be reasonable, I’m not interested, and I don’t think the government is interested, quite frankly, in pinning down a specific date on this, although we are obviously as interested as the member is in working as quickly as possible toward the objectives with respect to the amendment. But we can’t support this specific timeline.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

All those in favour of NDP motion 2.3? Those opposed? That amendment is lost.

Moving now to government motion 3. Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that subsection 7(3) of the bill be struck out and the following substituted:

“Participation of First Nations

“(3) The minister shall invite the First Nations having one or more reserves in the far north and one or more First Nations not having a reserve in the far north to work together in contributing to the preparation of the far north land use strategy, including the far north policy statements.”

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Orazietti.

Mr. David Orazietti: I think it's fairly clear that the amendment and the intent of the amendment is to strengthen the legislation with respect to the involvement of First Nations. We all heard from First Nations the concerns around their role in the far north land use strategy and, as well, with their own community land use plans. With respect to our motion 15 that will be coming forward, this is an opportunity for First Nations to play a role, perhaps a larger role, in land use planning. We want to ensure that that's clearly identified in the legislation.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Ouellette.

Mr. Jerry J. Ouellette: I'm wondering if the PA would be able to give us some idea more specifically of who these individuals are that you're referring to.

Mr. David Orazietti: I'm sorry? I didn't hear the—

Mr. Jerry J. Ouellette: Which individual groups or organizations are you referring to? Can you be a little more specific as to what you're trying to—

Mr. David Orazietti: My understanding is, really, from a variety of First Nation groups, from NAN and others, that there are concerns around—in their input. I think the member is well aware of the concerns of First Nations in the far north in terms of their role in land use planning and their role in a larger strategy. The effect of this amendment is to help to address those concerns so that the First Nations were going to be certain, through legislation and through an amendment that will strengthen and more clearly identify the role of First Nations within the land use planning. I think that's where the amendment is coming from. With respect to the member's question, to be more specific, I think we heard that, quite frankly, through and from many First Nations organizations in the far north.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Ouellette?

Mr. Jerry J. Ouellette: Thank you, Chair. Very specifically, it says, “The minister shall invite the First Nations having one or more reserves in the far north and one or more First Nations not having a reserve in the far north.” Is that a reference to non-status First Nations communities in the north—because those individuals are not on-reserve because they do not live under status

regulation—or is it a reference to First Nations communities below the far-north line?

Mr. David Orazietti: To be clear, it's a reference to First Nations of Treaty 5 or 9 who have reserves in the far north, or First Nations who have traditional lands in the far north.

Mr. Jerry J. Ouellette: So this does not include First Nations communities that—because quite frankly, “and one or more First Nations not having a reserve in the far north to work together”—that could be, for example, the Mississauga First Nations from Scugog Island, who don't have a reserve in the far north, but because of this amendment, they would be allowed input into what's taking place there.

Mr. David Orazietti: I'm going to ask for a more clear, specific response, if you could just bear with us for a second.

Mr. Gilles Bisson: As she's working her way to the front, I'll just pose the question now so that maybe we can wrap it into one answer. The way I read this is, any First Nation in the far north has to be part of the process and the minister has the right to appoint one or more First Nations not having reserves in the far north. That's basically all you're doing. It responds to First Nations who came before us and said that the tribal councils are important, they're political organizations, but that they don't speak for the actual First Nation. The authority lies with the First Nation, therefore all First Nations shall be involved. That's what I'm reading.

The Vice-Chair (Ms. Helena Jaczek): Could you please give your name?

Ms. Jessica Ginsburg: Jessica Ginsburg, MNR legal counsel.

The term “First Nation” is defined in section 2 of the act as meaning a band having one or more reserves set apart for it in the area of Treaty 5; or the James Bay Treaty, Treaty 9, which was made in 1905 and 1906 with adhesions made in 1929 and 1930—and then with the French translation. Where you see the term “First Nation” appear here, it refers to First Nations as defined, being those with one or more reserves set apart in Treaty 5 or Treaty 9. So where you see “First Nations having one or more reserves in the far north,” those are the Treaty 5 or Treaty 9 First Nations north of the boundary line; and where you see reference to “and one or more First Nations not having a reserve in the far north,” those would be, again, the First Nation as defined as the Treaty 5 or Treaty 9 First Nation not being located in the far north.

Mr. Jerry J. Ouellette: Essentially, what you're saying is that Grand Chief Stan Beaudy is located, although his home reserve is in the north—it is located in Thunder Bay—those individuals who are members of Treaty 9 who are located in Thunder Bay would then be allowed input into it. Is that what you're saying?

Ms. Jessica Ginsburg: It is still restricted to bands. Because it says “one or more First Nations,” it would be a minimum of one First Nation or band south of that line who would be included.

Mr. Jerry J. Ouellette: Only Treaty 5 and Treaty 9 First Nations communities are referenced, and those non-status ones who have not signed on to the treaty are excluded from this. Correct?

Ms. Jessica Ginsburg: The entire bill defines “First Nation” according to bands having one or more reserves in those treaties.

Mr. Jerry J. Ouellette: So they have to be treaty First Nations.

Ms. Jessica Ginsburg: Every reference to “First Nation” in any of our motions would be according to the definition of “First Nation” in the bill.

Mr. Jerry J. Ouellette: Okay.

The Vice-Chair (Ms. Helena Jaczek): Any further debate—

Mr. Gilles Bisson: I just want to make sure you’re addressing the concern that I heard. The concern was that all First Nations have to be involved. That’s what this does. This forces the minister to say, “All of you communities that are under Treaty 5 and 9, here’s the invite to come and talk to us about land use planning.” That’s what this does, right?

Ms. Jessica Ginsburg: The invitation would be extended to all First Nations having reserves in the far north.

Mr. Gilles Bisson: And what the second reference does, “and one or more First Nations not having a reserve”—that allows, then, the minister to name some other reserve that may have an interest but does not reside within Treaty 9. For example, the Chapeau Cree—yes, Chapeau would actually be close to Robinson-Superior, but they’re part of Treaty 9, so it allows them to participate.

The second, “and one or more First Nations not having a reserve in the far north,” means that the minister has the discretion to invite another First Nation outside of Treaty 5 and Treaty 9 to be part of the process, period.

Ms. Jessica Ginsburg: You’re saying outside of Treaty 5 or Treaty 9?

Mr. Gilles Bisson: Yes.

Ms. Jessica Ginsburg: They would still be within Treaty 5 or Treaty 9; they would simply not be located in the far north.

Mr. Gilles Bisson: Yes, we’re saying the same thing, but in a different way. Okay.

The Vice-Chair (Ms. Helena Jaczek): Any further debate on government motion 3?

Mr. Gilles Bisson: Just so we’re clear, because this is an important point: The long and the short of the story, what this means, is that if you are a First Nation residing in Treaty 5 or Treaty 9, you get an invite to the table. That’s what this means, period.

1530

Ms. Jessica Ginsburg: You’re saying that if you are a First Nation in Treaty 5 or Treaty 9 located in the far north—

Mr. Gilles Bisson: Or outside of the far north, as long as you’re Treaty 9.

Ms. Jessica Ginsburg: Well, if you’re not located in the far north, there’s the obligation to invite at least one.

Mr. Gilles Bisson: Yes. We’re agreeing. Don’t make this complicated. I just want to put something on the record really clearly. If I’m Attawapiskat, Fort Albany, Kashechewan, Big Trout Lake, I get an invite. If I’m in Treaty 9, Treaty 5, I’m in the far north, I get invited to the table. That’s what this means.

Ms. Jessica Ginsburg: If you are in Treaty 5 and 9 and you’re in the far north, then you would be part of that first group invited.

Mr. Gilles Bisson: Okay. I just wanted that for the record. Thank you.

The Vice-Chair (Ms. Helena Jaczek): Any further debate on government motion 3?

All those in favour of government motion 3? Those opposed? That is carried.

Now moving to NDP motion 3.1. Mr. Bisson.

Mr. Gilles Bisson: I move that subsection 7(3) of the bill be struck out and the following substituted:

“Participation of First Nations

“(3) The minister shall ensure that the First Nations participate in the preparation of the far north land use strategy and that the council of each of the First Nations pass a resolution approving the strategy.

“Policy objectives

“(3.1) The far north land use strategy shall contain policies that promote the objectives set out in section 6, including,

“(a) an ecological integrity policy which sets out indicators for ecological integrity in the far north;

“(b) policy guidance on the best methods for the sequestration of carbon in the far north;

“(c) a drinking water source protection policy for the far north; and

“(d) an integration policy that ensures that community based land use plans in the far north are consistent with each other.”

It’s fairly straightforward, just giving some definition and some meat to the issue.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: Going back to one of the previous amendments with respect to the commission, this is, I suppose, similar in the sense that my friend opposite is suggesting that the council of each First Nation pass a resolution. I think, again, it’s perhaps somewhat presumptuous of us, in legislation, to insist—and it’s beyond, frankly, the power of the minister to compel or insist—that First Nation groups in the far north pass council resolutions. I suppose if we had passed the other motion, this would all have to be done within the next six months, but that wasn’t carried.

We have more than 30 First Nation groups in the far north, and we have the suggestion here through this amendment that we put this in legislation, that the band councils pass resolutions. I understand the intent around the engagement. The member is looking for some assurance that First Nations are on board with where we’re

going in the legislation and looking for that, I suppose, agreement within each First Nation community, but I think that's a step they need to take on their own, without the government saying in legislation that it compels the First Nation groups in the far north to pass resolutions. I certainly don't want to be in a position where I'm explaining to a First Nations community that, "You must pass this resolution."

I know it's well intended with respect to seeking their agreement within the legislation, but I think that's a conclusion they'll have to draw on their own, and we're going to do that, I think, through this setting up of a joint planning committee and a joint planning team where the opportunity will arise. So we can't support the amendment.

The Vice-Chair (Ms. Helena Jaczek): Monsieur Bisson?

Mr. Gilles Bisson: It's consistent with a municipal plan. Under the Municipal Act, a municipality has the obligation in order to have their own land use planning process, and at the end of the day the municipal council has to vote on it. It's not any different. The language is different because it's a different act, but all it basically says is, "The minister shall ensure that the First Nations participate in the preparation of the far north land use strategy," so, number one, that they be in some control of the process by participating. And that each individual First Nation then has to approve that strategy would be no different than what we do with the Municipal Act. So to argue that we don't want to tell First Nations what to do—God, we're telling municipalities to do that in the Municipal Act.

So I hear you. Again, I would feel much better if we had a process by which the First Nations themselves were at the table helping to design this legislation, and at the end there was a buy-in by them and they said, "Yes, we accept this land use planning process." I agree with the parliamentary assistant that if we were to do that, we'd probably make sure that we don't have things that people cannot agree to. But this is an attempt to say (a) First Nations will participate, and (b) they will have a say about that by having to approve the strategy, and the policy objectives then are spelled out, such as making sure that land use plans are consistent with each other.

The Vice-Chair (Ms. Helena Jaczek): Any further debate?

Mr. David Oraziotti: I hear the member's comments, and I hear your point.

If you're in a situation where you have a First Nations group in the far north that says, "We're not interested in passing this"—so you pass this amendment and half pass resolutions and half don't—what happens to the strategy? You proceed in some communities and not others?

I think we're going down the road here where we need to let the First Nation communities have that decision-making, and that's really back to the premise of the bill and the spirit of the legislation, which is to engage First Nations and to allow First Nations that say and that direction within their own communities on the land use planning.

I understand the relationship here that you're making with communities or municipal jurisdictions across the province. I don't know that we want to be on the same page when it comes to our relationships with First Nations and our municipalities in some sense. So I'll leave it at that. We cannot support the amendment.

The Vice-Chair (Ms. Helena Jaczek): Any further debate?

Mr. Gilles Bisson: Not necessarily the Municipal Act but not necessarily the Municipal Act. Okay, got it.

Mr. David Oraziotti: All right.

The Vice-Chair (Ms. Helena Jaczek): Further debate? All those in favour of NDP motion 3.1?

Mr. Gilles Bisson: Recorded vote.

Ayes

Bisson, Ouellette.

Nays

Jeffrey, Kular, Mangat, Moridi, Oraziotti.

The Vice-Chair (Ms. Helena Jaczek): That motion is lost.

Moving on to government motion 4, Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that subsection 7(4) of the bill be amended by striking out "and" at the end of clause (b) and by adding the following clause:

"(b.1) policies relating to,

"(i) amending community based land use plans and the process for making the amendments,

"(ii) categories of land use designations in a planning area and the land uses and activities that are permitted in a category of land use designation, and

"(iii) categories of protected areas and the land uses and activities that are permitted in a category of protected area; and"

The Vice-Chair (Ms. Helena Jaczek): Further comment?

Mr. David Oraziotti: This amendment has the effect of really strengthening the role of First Nations with regard to land use planning. NAN indicated that they want greater input in the strategy in legislation, and this resolution has that effect.

The Vice-Chair (Ms. Helena Jaczek): Any further debate?

Mr. Jerry J. Ouellette: Yes. In section (ii), "categories of land use designations in a planning area and the land uses and activities that are permitted in a category of land use designation," can you give us some examples of how that is to unfold, very specifically? Are you referring to NOTOA, for example, having outpost camps in the far north that are currently there, for the ones that are there? What is that reference to when you're talking about land uses and activities and aspects like that?

Mr. David Oraziotti: We are going to get more specific information for you in a moment here.

The Vice-Chair (Ms. Helena Jaczek): If you could state your name, please.

Ms. Afsana Qureshi: Hi. Afsana Qureshi. I'm with the Ministry of Natural Resources and I'm the policy manager.

The Vice-Chair (Ms. Helena Jaczek): If you could clarify on Mr. Ouellette's question.

Ms. Afsana Qureshi: I think you're asking what these land use designations would look like. Part of our intent here is to have the discussions with First Nations in relation to the policies related to land use designations, so we don't have necessarily a predetermined outcome of what land use designations would look like without that dialogue first.

1540

The Vice-Chair (Ms. Helena Jaczek): Any further questions, Mr. Ouellette?

Mr. Jerry J. Ouellette: Yes. The "categories of land use designations," is very broad as to this legislation. The categories or uses could be unlimited that are designed after the legislation goes through, I believe, is what I'm hearing. Are you referring to the Chapleau crown game preserve or aspects like that? What are you envisioning here?

Ms. Afsana Qureshi: These land use designations would be categories of land use designations that would be available for First Nation communities to use through their community-based land use planning process that's enabled in other sections of the bill.

Mr. Jerry J. Ouellette: Okay.

The Vice-Chair (Ms. Helena Jaczek): Any further debate? No further debate, then, on government motion 4. All those in favour? All those opposed? That is carried.

Moving on to government motion 5, Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that subsection 7(6) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Far north policy statements

"(6) The minister shall prepare policy statements which may relate to the following matters in the far north, submit the statements to the Lieutenant Governor in Council and, with the approval of the Lieutenant Governor in Council, issue the statements:"

The Vice-Chair (Ms. Helena Jaczek): Any further comments?

Mr. David Oraziotti: Just to clarify, I think it makes it fairly clear within the legislation, but what it does is make the far north policy statements a mandatory requirement within the legislation, and it compels the minister and the government to ensure that those statements are made, and it's in the bill.

The Vice-Chair (Ms. Helena Jaczek): Mr. Ouellette?

Mr. Jerry J. Ouellette: The PA is saying that it's making it mandatory, yet the actual legislation says the minister "shall," not the minister "will," and "which may," as opposed to "which will." Why wouldn't they say "will prepare policy statements which will relate to

the following matters," because "shall" leaves it very wide open to the minister's discretion still?

Mr. David Oraziotti: The intent of the amendment is to ensure that this isn't a discretionary process, that they may or may not issue statements. It's to ensure that the minister shall make a statement on far north planning with respect to policy. So the intent of the amendment is to ensure that's not a discretionary process.

The Vice-Chair (Ms. Helena Jaczek): Perhaps legislative counsel could elucidate.

Mr. Michael Wood: Michael Wood, legislative counsel.

All throughout the bill, consistent with Ontario drafting style, when we want to express an obligation, we use the auxiliary verb "shall" and not "will." If you look at other subsections, you see, for instance, subsection 7(4), "The far north land use strategy shall contain all far north policy statements."

If you compare the motion for subsection 7(6) to the version of 7(6) in the bill, you'll see that in 7(6) of the bill it says, "The minister may issue policy statements." That's obviously optional, whereas in the motion before you here there is an obligation: "The minister shall prepare policy statements."

The Vice-Chair (Ms. Helena Jaczek): Are you satisfied, Mr. Ouellette?

Mr. Jerry J. Ouellette: With the explanation, yes, but there's further discussion.

The Vice-Chair (Ms. Helena Jaczek): Okay. Further debate?

Mr. Jerry J. Ouellette: So the intent is to move forward with statements, which is fine and understandable and agreeable. However, there are no timelines as to how often those statements should come out or should not come out. I would think that if the intent is to ensure that statements are going to come out on a regular basis, it should say annually or bi-annually or however, so that way there is some intent to ensure that subsequent ministers have the ability to make that change, to come forward and make a statement, because there isn't anything specifically stating any timelines in there at all.

The Vice-Chair (Ms. Helena Jaczek): Mr. Oraziotti.

Mr. David Oraziotti: Not contained specifically within this amendment. As the member knows, within the bill it's within 10 years, so that's there and obviously there will be further discussion on that as well.

The point of this amendment is to change the discretionary power of the minister—from "may make statements with regard to far north planning" to mandatory.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

All those in favour of government motion 5? Those opposed? That is carried.

Government motion 6.

Mrs. Linda Jeffrey: I move that subsection 7(8) of the bill be struck out and the following substituted:

"Review

"(8) At least every 10 years after issuing a far north policy statement, the minister shall invite the First

Nations having one or more reserves in the far north and one or more First Nations not having a reserve in the far north to work together in reviewing the statement to determine whether it is necessary to amend it.”

The Vice-Chair (Ms. Helena Jaczek): Further comment? Mr. Orazietti.

Mr. David Orazietti: Again, this adds further clarity and strength to the bill in terms of the involvement of First Nations within a certain time frame and to ensure that they're engaged in the process. It parallels the involvement of First Nations in the preparation of the far north land use strategy. That's the purpose of the amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

All those in favour of government motion 6? Those opposed? That is carried.

Any further debate on section 7?

All those in favour of section 7, as amended? All those opposed? That is carried.

Moving on to PC motion 6.1 in relation to new section 7.1.

Mr. Jerry J. Ouellette: I move that the bill be amended by adding the following section:

“Precondition for community based land use plan

“7.1(1) No land use plan shall be prepared under section 8 or approved as a community based land use plan under that section unless the minister has,

“(a) had a comprehensive mapping performed of the far north showing geological formations and current mineral exploration;

“(b) posted a copy of the mapping on the government of Ontario site on the Internet;

“(c) provided an opportunity to the public to provide written comments on the accuracy of the mapping within the time period that the minister specifies;

“(d) taken into account the comments received under clause (c); and

“(e) made an order confirming the mapping.

“Discretion to make order

“(2) Upon complying with clauses (1)(a) to (d), the Lieutenant Governor in Council may make an order under clause (1)(e) confirming the mapping with the changes, if any, from the copy posted under clause (b) that the minister considers appropriate.”

The Vice-Chair (Ms. Helena Jaczek): Any further comment?

Mr. Jerry J. Ouellette: I'm hoping this is fairly clear. It's just designed that we're moving forward with a rather substantial—essentially, a lot of organizations are concerned about how the north is going to take place, or how it's going to unfold, particularly whether it's mapping for geological formation—that mineral exploration will have a large opportunity to ensure that the public can see this before it's moved into the next process. Effectively, that's all it is. It's giving those members of the prospecting and mining communities the opportunity to see this area prior to it changing the dynamics of what's going to take place.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Orazietti.

Mr. David Orazietti: While the member is right—this is a substantial change and it would be a significant change to the legislation as it's intended at this point. The concern is that if we do this, we're going to be holding up First Nation land use planning. Based on the best information to date, communities proceed with their land use plans. To say that First Nation communities can't proceed until all of these steps are completed in a geological, thorough mapping process of the entire far north would really be, in many ways, unfair to First Nations.

There are opportunities—and I think the member knows this—within the legislation and through a joint planning team that we're proposing to set up, and also with further consultations and discussions that will take place to ensure that those areas that First Nations feel are culturally or ecologically significant can be protected, and areas that they want to see development take place on, in partnership with industry or private sector, can go forward.

I think the amendment is one that really would delay unnecessarily the opportunity for First Nations communities to move forward with their land use plans. We can't support it at this time.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Ouellette.

1550

Mr. Jerry J. Ouellette: During the committee hearings we saw two First Nations communities come forward in Sioux Lookout that had overlapping land use plans. The difficulty with not moving forward with this is that once a potential geological site has been determined, the conflict between land use plans may expand, whereas in the event that this is—and those who have worked in that sector realize it's not an exact science; it's very approximate, a lot of this geological mapping. It eliminates a lot of the concerns that may arise later on when you're having land use planning areas that may overlap, as to which area is in conflict.

For example, if another kimberlite site is found prior to that, by moving forward with this it eliminates the conflict area, saying, “We have nothing to worry about there. We can move forward.” However, if there are conflict areas before the land use planning, it may speed up that process because they can eliminate that to be resolved at a later date and move around it.

That's all we're trying to do here. It's actually, in my opinion, benefiting it a lot and moving the process forward a little bit quicker.

The Vice-Chair (Ms. Helena Jaczek): Further comment?

Mr. David Orazietti: To my friend opposite, ideally I think you're right in the sense that where those opportunities exist and where that can be done, we certainly encourage it. I think you're right. There are some definite benefits to avoiding what could be potential difficulties in planning. To put it in the legislation as a fundamental requirement prior to any land use planning for First

Nation communities, we're going to be doing First Nation communities a disservice and it will unnecessarily burden First Nation communities when they could move forward, as the member knows in many of the instances with land use planning.

So, point well taken; I understand where you're coming from. We can't support that because it would compel everyone in the far north to ensure that that's done prior to any land use planning, although where those opportunities exist, we certainly encourage them. I think they are beneficial, and I recognize the member's point. Thank you.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

All those in favour of PC motion 6.1? All those opposed? That is lost.

Moving to section 8, government motion 7. Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that subsections 8(1) and (2) of the bill be amended by adding "initiating the planning process by" after "their interest in" wherever that expression appears.

The Vice-Chair (Ms. Helena Jaczek): Explanation, Mr. Orazietti?

Mr. David Orazietti: I think this amendment recognizes that we're not interested in imposing the land use planning process in the sense of having communities and First Nation communities bring this forward; in other words, where they would initiate the process and where they are interested in ensuring that this is done so that further development or development of any nature can in fact take place. It's something that the First Nation communities are aware of and are interested in seeing take place, so that this would be at their initiation, and that's the purpose of this amendment within the legislation.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Monsieur Bisson?

Mr. Gilles Bisson: No, I'm just sneezing.

The Vice-Chair (Ms. Helena Jaczek): No? Just sneezing? Any further debate?

If not, all those in favour of government motion 7? Those opposed? That is carried.

PC motion 7.2. Mr. Ouellette.

Mr. Jerry J. Ouellette: I move that subsections 8(1) and (2) of the bill be struck out and the following substituted:

"Community based land use plan

"(1) Subject to section 7.1, if one or more of the following bodies indicate to the minister their interest in preparing terms of reference to guide the designation of an area in the far north as a planning area and the preparation of a land use plan for the purposes of this section, the minister shall work with them to prepare the terms of reference:

"1. First Nations whether or not they have a reserve in the far north.

"2. Associations of persons commonly referred to as non-status Indians and Metis or of persons of the Inuit race, if the government of Ontario or Canada recognizes

the associations as representative of those persons and representative of the interests of residents of the far north.

"3. Associations of other persons if the government of Ontario or Canada recognizes the associations as representative of the interests of residents of the far north."

The Vice-Chair (Ms. Helena Jaczek): Further comment?

Mr. Jerry J. Ouellette: For example, NOTOA has outposts in the far north and a lot of these planning areas, community-based land use plans. We want to ensure that there is some opportunity for organizations such as NOTOA to be included in part of that process, to make sure that if and when the land use moves forward, that during the initial stage of it they have the opportunity to sit down, so long as they are recognized organizations by the province and the federal government. We want to make sure that they are proper representatives.

Also, as I've stated in the past, there are a number of First Nation communities within the far north that are non-status First Nation communities. We want to make sure they're included, as well as the Metis individuals who have indicated that they're looking for the opportunity to have input on what's taking place in the north.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Orazietti: A couple of concerns here with respect to the amendment: Overall, it really diminishes the intent of the bill in dealing with First Nations within the far north. I think part of the concern is that by this amendment, any First Nation individual in any part of Ontario could take part in the planning in the far north—other than Treaties 5 and 9. There would be some concerns around who is involved. This really opens it up that anybody is involved in planning in the far north. The reality is that we want to ensure that the First Nation communities that live in the far north play the leading role in planning their communities and in land use planning.

So while I appreciate the intent of the amendment, the government can't support it because it really diminishes or takes away from the intent of the bill, which is to work with the First Nation communities that are in the far north for their planning.

The Vice-Chair (Ms. Helena Jaczek): Further comment?

Mr. Jerry J. Ouellette: I just feel it's necessary that all those individuals who wish to participate in activities that take place in the province of Ontario be given the opportunity. Although predominantly, yes, the First Nations are, as stated earlier on, 99% of the individuals who live in those areas, there are other groups and organizations that participate in activities in those areas, whether it's fly-in fishing camps or fly-in hunting camps, or there are snowmobilers who do their run to James Bay, Hudson Bay, who would go through those areas—those associations, whether they're coming out of Hearst and a number of other areas, have the opportunity to have some say. To me, we have to be inclusive, otherwise the farther

and the tighter we move, the more friction that will appear with organizations.

I think being at the table when it's set up and when it's taking place will have a far greater effect, rather than, "Here's the plan and let's see afterwards."

The Vice-Chair (Ms. Helena Jaczek): Further debate? All those in favour of PC motion 7.2? Those opposed? That is lost.

Moving to government motion 8, Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that section 8 of the bill be amended by adding the following subsection:

"Joint planning team

"(2.1) The First Nations that work with the minister under subsection (1) or (2) and the minister shall,

"(a) create a joint planning team that the parties shall use when preparing the terms of reference, the land use plan mentioned in subsection (5) and any amendments to the terms of reference, the planning area or the plan; and

"(b) include a description of the joint planning team in the terms of reference."

The Vice-Chair (Ms. Helena Jaczek): Comment? Mr. Orazietti.

Mr. David Orazietti: Again, the intent of the amendment is to recognize that the planning that will be done in the far north will be done with First Nations leading the process but in partnership with the province. We know that we currently have eight First Nations that have created joint planning teams and are making significant progress. We know that in fact there are about 25 different First Nations that are already engaged with the province to varying degrees. We want to see this take shape in a way that First Nations can support, but we need to have that discussion first as to how that will unfold, and the opportunity through the joint planning team, we think, is a good one and is one that First Nations are interested in.

The Vice-Chair (Ms. Helena Jaczek): Further comment? Further debate? All those in favour of government motion 8? Those opposed? That is carried.

Moving to PC motion 8.1, Mr. Ouellette.

1600

Mr. Jerry J. Ouellette: I move that clause 8(3)(a) of the bill be struck out and the following substituted:

"(a) the council of each of the First Nations and each of the bodies that works with the minister under subsection (1) have passed a resolution approving the terms of reference;"

The Vice-Chair (Ms. Helena Jaczek): Any explanation?

Mr. Jerry J. Ouellette: Essentially, it follows up on the previous one, whereby we want to make sure that those bodies that work with the minister—there are a number of other organizations, whether it's the Metis or whether it's the non-status First Nation communities—are given the opportunity to work with them.

The Vice-Chair (Ms. Helena Jaczek): I believe that this motion is now out of order because the previous one was defeated.

Therefore, moving on to NDP motion 8.2. Monsieur Bisson.

Mr. Gilles Bisson: I move that clause 8(3)(b) of the bill be struck out and the following substituted:

"(b) the commission and the Lieutenant Governor in Council have approved the terms of reference; and"

Again, it will be voted down, because we've already voted the sections, so I will withdraw this. It's kind of a moot point.

The Vice-Chair (Ms. Helena Jaczek): Thank you. So that is withdrawn.

NDP motion 8.3.

Mr. Gilles Bisson: Again, the commission is not approved in the previous subsection, so I withdraw this one.

The Vice-Chair (Ms. Helena Jaczek): Then we're moving to government motion 9. Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that subsection 8(5) of the bill be amended by striking out "One or more of" at the beginning.

The Vice-Chair (Ms. Helena Jaczek): Mr. Orazietti?

Mr. David Orazietti: Just to be clear, this is a minor technical amendment that clarifies that the First Nations who work on the terms of reference are also the same working on the plan—

The Vice-Chair (Ms. Helena Jaczek): Any further—

Mr. David Orazietti: —so there's continuity through the planning process. I'm sorry. That's all we have to add on that.

The Vice-Chair (Ms. Helena Jaczek): Further debate? No further debate.

All those in favour of government motion 9? Those opposed? That is carried.

PC motion 9.1, Mr. Ouellette.

Mr. Jerry J. Ouellette: I move that subsection 8(5) of the bill be struck out and the following substituted:

"Preparation of plan

"(5) One or more of the bodies that work with the minister under subsection (1) may work with the minister to prepare a land use plan for the planning area."

I believe—

The Vice-Chair (Ms. Helena Jaczek): I believe this is out of order, since the previous motion was lost. So that is withdrawn.

PC motion 9.2.

Mr. Jerry J. Ouellette: I believe that is out of order as well, Madam Chair.

The Vice-Chair (Ms. Helena Jaczek): Thank you. So that's withdrawn.

Moving, then, to NDP motion 9.2.1.

Mr. Gilles Bisson: I move that subsection 8(6) of the bill be struck out and the following substituted:

"Far north land use strategy

"(6) In preparing a land use plan under subsection (5), the First Nations that prepare the plan and the minister shall ensure that the plan is consistent with,

"(a) the far north land use strategy as it exists at the time the plan is prepared; or

“(b) the objectives set out in section 6 if there is no far north land use strategy at the time that the plan is prepared.”

It's fairly straightforward.

The Vice-Chair (Ms. Helena Jaczek): Would you like to make any further comment on that, Monsieur Bisson?

Mr. Gilles Bisson: Again, it just tries to give some substance to the land use planning process.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: I appreciate the amendment. I think, however, it's already addressed in subsection 8(15) of the bill. Subsection 8(15) of the current bill requires that the minister take into account the objective for land use planning when approving a community-based land use plan. So, to my friend across the room here, the amendment he has put forward is, I believe, already included within the bill in subsection 8(15), and we will not be supporting it.

The Vice-Chair (Ms. Helena Jaczek): Further comment?

Mr. Gilles Bisson: It only proves that I'm clairvoyant.

The Vice-Chair (Ms. Helena Jaczek): Any further debate?

All those in favour of NDP motion 9.2.1? Those opposed? That is lost.

PC motion 9.3, Mr. Ouellette.

Mr. Jerry J. Ouellette: I move that subsection 8(8) of the bill be amended by adding the following clause:

“(c.1) specify the effect that the land uses that are permitted in the area will have on fishing, trapping, hunting, prospecting and commercial timber harvest;”

The Vice-Chair (Ms. Helena Jaczek): Further explanation?

Mr. Jerry J. Ouellette: Effectively, the land use plans can be very broad, although we want to ensure that there are certain things that are included in there so that there is consistency from the various land use plans, so that other organizations like NOTOA understand how they're going to be affected within the plan.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: I understand the intent of the amendment. I guess the concern is that while there are specific areas that have been identified within the amendment—fishing, trapping, hunting—it's perhaps too prescriptive. In other words, in working with the First Nations, in partnership with them as they each individually develop their community land use plan, they may identify things other than these or in addition to the items that have been mentioned. So, there's a concern that this is too prescriptive and that it's somewhat premature in the sense that those plans have yet to be developed in large part with First Nations and in partnership with them.

So those items that are mentioned might very well be included, but each First Nation community is different and has different priorities and different areas in which

they will plan, and we'll leave it to their discretion, in partnership with them in part, I suppose, to have them identify those particular areas. So we can't support this particular amendment, Madam Chair.

Mr. Jerry J. Ouellette: I think some aspect of it is that individuals who would be travelling into those areas on a regular basis at this particular time would be hunting, fishing, trapping, forestry and mining individuals, or there would be a component of individuals who would be interested, for example, in the Hudson-James Bay lowland. Birdwatchers, during migration, are very active in the area.

All we're looking for is to ensure that there's some understanding of how those areas will be affected, if and when the plan is implemented, and we want to make sure that there's a full understanding prior, then, to those having a plan come out with no definition or no understanding of somebody from Sault Ste. Marie travelling into the north to find out if they're going to be able to fish their favourite spot.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: Well, I'll tell you, it's an issue. Just for the record, as my good friend the fellow northerner here would know, if you want to upset somebody, just all of a sudden decide that you're going to protect an area where somebody has been traditionally hunting or fishing, be it First Nations or non-First Nations residents of northern Ontario.

I'm not speaking to your amendment directly, but I can tell you that I—and you had him as minister, I am sure; as a matter of fact, I think I banged at your door when you were the minister. It just drives people absolutely stark raving mad when their family has been hunting or fishing a particular area for years, or even camping, in some cases—just bringing the trailer out in the summer and camping in an area on a particular long weekend is a thing that the family does together on a regular basis—and all of a sudden they drive up with their camper and they find out that the place is closed to camping or they show up with their boat to go fishing and they can't fish any more. I'll tell you it drives people just absolutely mad.

I think what Mr. Ouellette is trying to get at is, if there's going to be some form of restriction, there needs to be a process by which people are informed of what the restriction will be so that they have some input and, number two, that they don't end up driving up there and finding out that the darned thing has been closed off, after many hours on the road of hauling a trailer or whatever it might be up to the area.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: Thank you for the concern around Sault Ste. Marie. That's fantastic to hear.

To your point, though, with regard to possible changes for individuals—and Mr. Bisson, as well, has just mentioned this—on page 6 of the legislation, subclause 8(7)(b)(ii) provides that the public will be able to provide

written comments on any changes to the plan with respect to existing uses. So that's something that's already in place within the legislation.

Again, the concern is around identifying these specific five activities apart from any other activity that could take place in this area. We think that's too prescriptive. There will be other uses or purposes for which individuals will be in the far north. We're interested in seeing the land use planning in partnership with the First Nations take place and those areas identified. Again, to allay some of the concerns around that, within the bill there is an opportunity for the public to provide written comments with regard to any changes of existing uses in the far north. So I think that addresses and accommodates the issue Mr. Bisson's referenced—and Mr. Ouellette.

1610

The Vice-Chair (Ms. Helena Jaczek): Any further comment or debate? All those in favour of PC motion 9.3? All those opposed? That is lost.

Government motion 10. Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that clauses 8(10)(a) and (b) of the bill be struck out and the following substituted:

“(a) the First Nations that work with the minister under subsections (1) or (2) on preparing the original terms of reference work with the minister to prepare terms of reference to guide the making of the amendment;

“(b) the council of each of the First Nations that work with the minister under subsections (1) or (2) on preparing the original terms of reference has passed a resolution approving the terms of reference to guide the making of the amendment;”

The Vice-Chair (Ms. Helena Jaczek): Explanation?

Mr. David Oraziotti: Yes. Just to add to that, again, this is a technical amendment that ensures that the same First Nation groups who work on the terms of reference also work on the amendments in the planning area. It ensures a continuity in the process through the legislation.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Monsieur Bisson?

Mr. Gilles Bisson: Yes. I think the answer is obvious, but (c) and (d) remain, right? Under section 10, you're just taking out (a) and (b), but you're leaving (c) and (d) in?

Mr. David Oraziotti: Yes.

The Vice-Chair (Ms. Helena Jaczek): That's correct. Any further debate? All those in favour of government motion 10? Those opposed? That is carried.

Moving on to PC motion 10.1, Mr. Ouellette, I believe this may be out of order.

Mr. Jerry J. Ouellette: Yes.

The Vice-Chair (Ms. Helena Jaczek): Similarly for PC motion 10.2?

Mr. Jerry J. Ouellette: Yes.

The Vice-Chair (Ms. Helena Jaczek): Then we will move on to government motion 11. Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that subsection 8(11) of the bill be struck out and the following substituted:

“Amended terms of reference

“(11) At any time before a land use plan mentioned in subsection (5) is approved as a community based land use plan, the First Nations that worked with the minister under subsection (1) or (2) on preparing the terms of reference may work with the minister to amend the terms of reference as they apply to guide the preparation of the plan.”

The Vice-Chair (Ms. Helena Jaczek): Explanation, Mr. Oraziotti?

Mr. David Oraziotti: Another technical amendment to ensure that the same First Nations who worked on the original terms of reference also work on the amendments, and again, it ensures continuity.

The Vice-Chair (Ms. Helena Jaczek): Further debate? All those in favour of government motion 11? Those opposed? That is carried.

Mr. Ouellette, PC motion 11.1 is again out of order, so we move to government motion 12. Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that clause 8(12)(a) of the bill be struck out and the following substituted:

“(a) the council of each of the First Nations that prepared the original terms of reference with the minister has passed a resolution approving the terms of reference containing the amendment; and”

The Vice-Chair (Ms. Helena Jaczek): Mr. Oraziotti?

Mr. David Oraziotti: Again, a technical amendment to ensure that the First Nations that are working on the terms of reference are working on the amended references, and it ensures that there's continuity in the process.

The Vice-Chair (Ms. Helena Jaczek): Further debate? All those in favour of government motion 12? Those opposed? That is carried.

NDP motion 12.0.1. Mr. Bisson, would this again be out of order?

Mr. Gilles Bisson: Withdrawn. It's not out of order; it's only withdrawn. To be clear, it's not out of order; it's just withdrawn.

The Vice-Chair (Ms. Helena Jaczek): Okay. I'm happy to hear it is withdrawn.

Mr. Ouellette, 12.1?

Mr. Jerry J. Ouellette: It is out of order, I believe.

The Vice-Chair (Ms. Helena Jaczek): Yes, out of order. And NDP motion 12.1.1?

Mr. Gilles Bisson: Withdrawn.

The Vice-Chair (Ms. Helena Jaczek): Thank you. And 12.1.2?

Mr. Gilles Bisson: Withdrawn.

The Vice-Chair (Ms. Helena Jaczek): Any further debate on section 8, as amended?

All those in favour of section 8, as amended? Those opposed? That is carried.

Section 9: PC motion 12.2.

Mr. Jerry J. Ouellette: It's out of order, Madam Chair.

The Vice-Chair (Ms. Helena Jaczek): Out of order. And PC motion 12.3?

Mr. Jerry J. Ouellette: Out of order as well.

The Vice-Chair (Ms. Helena Jaczek): Thank you.

NDP motion 12.4.

Mr. Gilles Bisson: I move that clause 11(2)(a) of the bill be struck out and the following substituted:

“(a) the construction is for a First Nation community use and has the support of the First Nations that are affected by the development, as evidenced by resolutions passed by their councils; and”

The Vice-Chair (Ms. Helena Jaczek): Explanation?

Mr. Gilles Bisson: Call it the De Beers clause. Basically, at the end it's that no development could go forward unless there is a vote by the First Nation in order to allow it—

The Vice-Chair (Ms. Helena Jaczek): Mr. Bisson, apparently we have to pause.

Mr. Gilles Bisson: Pause.

The Vice-Chair (Ms. Helena Jaczek): Unfortunately, Monsieur Bisson, your motion alludes to section 11 and we have got the motions out of order at this point, in an incorrect order. We need to talk about section 9 at this point. Your amendment relates to section 11.

Any debate on section 9?

Seeing none, all those in favour of section 9? Those opposed? That is carried.

Section 10: Any debate on section 10? We have no amendments. That is carried.

Now we move to section 11. We now will be talking about Monsieur Bisson's NDP motion 12.4.

Mr. Gilles Bisson: Okay. I'd given an explanation previously, so I'm curious to see what the parliamentary assistant has to say.

The Vice-Chair (Ms. Helena Jaczek): Mr. Orazietti?

Mr. David Orazietti: I think the reference is to a broader use. It's somewhat redundant in that the minister can make an exemption for a community use, so we can't support the motion. If you want a further explanation, I'd ask legal counsel to come forward and elaborate on that.

Mr. Gilles Bisson: Yes, well, I should elaborate, because now that I read the section and I read the amendment, I have a different explanation. I thought I was on another amendment. I apologize.

Mr. David Orazietti: No problem.

Mr. Gilles Bisson: What subsection 11(2) deals with is electrical transmission. What this was all about is making sure that if a First Nation is building, let's say, some sort of a power system, as long as there's a resolution of the council saying, “Go ahead, this is fine,” then they would be allowed to go ahead and do it.

The Vice-Chair (Ms. Helena Jaczek): Any further comment, Mr. Orazietti?

Mr. David Orazietti: I think the reference, though, in clause 11(3)(a) already deals with this to some extent. You're talking about transmission, so you're talking about a broader use than just community, in the sense of multiple communities or over a region.

Mr. Gilles Bisson: Could be a region, yes.

Mr. David Orazietti: So this is a bit more specific. To some extent, it's redundant. And again, the minister can make the exemption for community use already, so you really don't need the amendment.

Mr. Gilles Bisson: You're just arguing me down, though. This is not fair.

The Vice-Chair (Ms. Helena Jaczek): Any further debate on NDP motion 12.4?

All those in favour of NDP motion 12.4? Those opposed? That is lost.

Now we move on to government motion 13.

Mrs. Linda Jeffrey: I move that subsection 11(3) of the bill be amended by striking out the portion before clause (a) and substituting the following:

“Exempting order

“(3) Despite subsections (1) and (2), a person may undertake a development described in subsection (1) if,”

The Vice-Chair (Ms. Helena Jaczek): Explanation, Mr. Orazietti?

Mr. David Orazietti: It's a technical amendment that ensures there's no ambiguity on the use of the LGIC exemption authority for electrical transmission facilities and lines and associated all-weather roads.

1620

The Vice-Chair (Ms. Helena Jaczek): Any further debate?

All those in favour of government motion 13? Those opposed? That is carried.

PC motion 13.1.

Mr. Jerry J. Ouellette: I move that clause 11(3)(a) of the bill be struck out and the following substituted:

“(a) the minister by order confirms that a community in the area where the development is to take place has determined that the development is predominantly for the benefit of the community; or”

The Vice-Chair (Ms. Helena Jaczek): Mr. Ouellette, any explanation?

Mr. Jerry J. Ouellette: The limitation of the community use unfairly restricts the potential of aboriginal communities to pursue renewable energy opportunities. This should be rectified by amending the paragraph to include projects that provide a community benefit as determined by the community.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Orazietti: The reference to community benefit, I suppose, in contrast to community use, which is accommodated—again, I think the government's position on this is that we recognize that some developments, such as those that are predominantly for community use, will need to take place in the absence of community land use plans, but there is some difference here with what's being suggested by the member. The suggested amendment would broaden the application of the exemption and could open the doors to large-scale industrial or commercial development in the far north prior to land use planning. We're prepared to do that in the sense of community use, but I suppose the reference that would be broader than that is that larger industrial or commercial development could take place without the checks and balances, so to speak.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Jerry J. Ouellette: It still is defined by the community to ensure that they see the benefit there. We want to get economic development going. To me, if the community is defining a benefit in your example about higher-level projects that can be linked into elsewhere or in other communities, that would be advantageous.

Mr. David Oraziatti: Yes, I understand your point and I think we are, in part, on the same page on this. I'm going to ask counsel to come forward just to add a little more clarity to this because there are some nuances with respect to community use and community benefit that I think need to be clarified.

The Vice-Chair (Ms. Helena Jaczek): If you could come forward and again identify yourself, please.

Ms. Afsana Qureshi: My name is Afsana Qureshi. I'm with the Ministry of Natural Resources, and I'm the far north policy manager with the far north branch.

Could you maybe help me understand the question?

Mr. Jerry J. Ouellette: We just want to ensure that a community is the deciding factor by which the benefit actually takes place in that area.

Ms. Afsana Qureshi: What we've provided for in the bill is that developments that are predominantly for community use could move forward with the considerations that are in the bill already. What I understand this motion would bring forward is opening that up to a broader array of development. Part of the thinking was that land use planning in advance of some major developments helps ensure wise use-of-land decisions. Not opening the door to potentially larger-scale development was why we limited it predominantly to community—

Mr. Jerry J. Ouellette: But I thought that was the intent, to bring economic development to the First Nations communities. The Ginoogaming First Nation community just signed a memorandum of understanding with mining companies that would take place in the far north that will give them the potential to develop—I can't remember; it was gold sites, I believe—where they would receive an economic benefit. We just want to make sure that we give the First Nations communities the opportunity to move forward. What you're saying here is that we're going to restrict that until we have a land use plan in place? Is that what you're saying?

Ms. Afsana Qureshi: For major developments, generally yes, as outlined in the bill, until there's a community-based land use plan in place.

Mr. Jerry J. Ouellette: So major developments will not be allowed—if there's another Musselwhite find and there's an agreement with the First Nation communities, they will not be allowed to move forward?

Ms. Afsana Qureshi: Until they have a community—

Mr. Jerry J. Ouellette: A land use plan.

Ms. Afsana Qureshi: Yes.

The Vice-Chair (Ms. Helena Jaczek): Any further questions or comments?

Mr. Jerry J. Ouellette: I find this contrary to the intent of the bill, which was to aid the First Nation communities in—

Mr. Gilles Bisson: Economic development.

Mr. Jerry J. Ouellette: Yes.

The Vice-Chair (Ms. Helena Jaczek): Any comment, Mr. Oraziatti?

Mr. David Oraziatti: Mr. Bisson.

The Vice-Chair (Ms. Helena Jaczek): Monsieur Bisson?

Mr. Gilles Bisson: This speaks to the issue that others have raised in the committee hearings, which is that part of the process of what is being established here will create a whole bunch of uncertainty when it comes to economic development in the far north. You've got 50% of the land that may be—there's approximately 50% of land that we think will be established as being protected at the end of the process. And if you're not in a project now that's grandfathered, you're going to be in a situation of not knowing where that 50% is, number one. So they argue that that's going to add uncertainty, and this just adds to it. I think it's fuel for the fire.

What you would end up with, if your explanation is correct, is you can have a mining development—a mining property—that is discovered in an area that is not yet covered by this bill, and you would not be able to do anything until the bill and the land use planning process is done.

The Vice-Chair (Ms. Helena Jaczek): Mr. Oraziatti?

Mr. David Oraziatti: Thank you. Unless you want to respond to that, I—

Ms. Afsana Qureshi: Just from a technical point of view, you would be permitted to do a certain amount of work up on the claim, up to opening the mine.

Mr. Gilles Bisson: But you would not be able to do the development, right?

Ms. Afsana Qureshi: Up to opening the mine.

Mr. Gilles Bisson: But nobody's going to explore for 10 years. That's what it means. It shuts down the exploration for 10 years if you do that. I wouldn't spend a dime up north.

The Vice-Chair (Ms. Helena Jaczek): Mr. Oraziatti?

Mr. David Oraziatti: That's not the intent. I understand where you're coming from. There are some merits to the amendment, although I think it broadens the use to a greater extent and weakens the position of the minister and cabinet to allow the instances where community use would be allowed. This takes it to, really, another level where you're talking about a larger-scale development where there is the absence of land use planning.

If we're going to be making exemptions to land use planning, we need to be mindful of where and when we do that and how frequently, and the instances in which that takes place. That needs to be kept, I think, for the most part, to a minimum to encourage the land use planning to take place so that you're not simply saying, "Oh, any time you identify a benefit, just throw the land use plan aside and proceed."

While we do want development to take place and while we do want the First Nations to have the opportunities for economic development, I think we need to be cautious around the emphasis and the importance that we're placing on that development in comparison to land

use planning. Land use planning is a priority. We know that we need that to take place, and we know that it helps give certainty to both First Nations and the industry. I would just say that this amendment takes that, really, beyond what the intent of the bill is, to some extent.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Ouellette?

Mr. Jerry J. Ouellette: Very specifically, the clause in there says, “the minister by order determines that the development is predominantly for community use in the area where the development is to take place....” If supplying another First Nations community with—for example, most, I hope, would know that on the Hudson-James Bay coastline, wind power generation is very beneficial, and the opportunity to supply other communities with that would be there. However, we want to make sure that it’s more than just the use; it’s the benefit to the community so that other communities could benefit from it as well. This, essentially, says that “the minister by order determines that the development is predominantly for community use....” We want to make sure that the others can benefit from it as well.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: I understand where the member is coming from. I think the approach is going to, to some extent, weaken the discretion around the importance of land use planning in comparison to that exemption or to that being entrenched in the legislation around large-scale development. We want to ensure that land use planning takes place and is a priority, and in the instance where there’s a benefit for community use, there is the ability for the minister and cabinet to move ahead with that.

Again, the government is not prepared to support this particular amendment the way it’s worded.

The Vice-Chair (Ms. Helena Jaczek): Any further debate? All those in favour of PC motion 13.1? Those opposed? That is lost.

NDP motion 13.1.1, Mr. Bisson.

1630

Mr. Gilles Bisson: I move that clause 11(3)(b) of the bill be amended by adding “significant” after “the development is in the”.

Basically what that does is signify that the development has got to be a significant development rather than just saying a development.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: With respect to the amendment, the opportunity for cabinet and the minister to determine what is significant—we’re back to square one with that, in respect, anyway. We want to identify that we’re going to add significant development. I think the purpose of that is that the exemption is only going to be used where the development is in the social and economic interests of Ontario to begin with. So obviously, if it is significant, that will be a determining factor in the process regardless.

I think what the member is saying is correct in the sense that that needs to be considered or it needs to be significant, where the exemption is used. I think that’s going to be a determination by the government or cabinet of the day with respect to any decisions pertaining to this legislation. I think it’s already incorporated in the bill with the exemption, so we won’t be supporting the amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: The way it reads now is that it could be a very small project that has very little impact and the cabinet could exempt it, the way it’s reading now. If you add the word “significant,” then it at least puts a threshold by which cabinet can’t just approve because they know somebody or—I’m not saying that you would do that, but you follow where I’m going.

Mr. David Oraziotti: I understand what you’re saying. I think “significant” without any criteria is going to be up for debate anyway and I think you’re back to the decision by the government of the day or the cabinet of the day.

The Vice-Chair (Ms. Helena Jaczek): Further debate? All those in favour of NDP motion 13.1.1? Those opposed? That is lost.

PC motion 13.2.

Mr. Jerry J. Ouellette: I move that subclause 11(4)(c)(ii) of the bill be struck out and the following substituted:

“(ii) a community in the area has determined that the development is predominantly for the benefit of the community;”

Quite frankly, I’m very concerned. We’re going to probably take a recess after this one—20 minutes—and you need to talk, because the only thing that this bill is saying is that that First Nation community is the only one that is going to get any benefit from anything that takes place in any development at all and, quite frankly, I think that’s wrong.

If you want to advance the north or if you want to restrict them to local communities, then that’s what’s going to happen. If the only use is for community use, it’s not for a benefit at all. The minister still has ample control in a number of areas here, but we want to make sure that the communities have a benefit so that they can effectively use or sell off any resources that may be available there.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziotti: Again on the point—and I understand where the member’s coming from—that’s in absence of a land use plan. So where there’s not a land use plan in place, it’s for the community use. I would agree with you in the sense that we want to see communities across northern Ontario and the far north benefit, whether it’s through transmission, water power, whatnot, but the land use plan needs to be in place prior to that, being a more broad sense of development. So “within the community” would remove any requirement for land use

planning to be done within that particular community. That's why we didn't support the previous amendment and why we can't support this amendment.

Mr. Jerry J. Ouellette: It doesn't say that. Effectively, it says "for the benefit of the community." That allows them to work with other communities so that they can benefit as well. What you're doing here is you're restricting it to a sole community and keeping them isolated. So if there are opportunities for development or for the movement of goods through various areas, that's limited now because the minister is limited in the ability to look at that sole community for its use and not its benefit.

The difference here, for those who don't understand, is that what is being said is this legislation proposes that that isolated community is the only one that the minister is allowed to see any benefit coming to at all. That community cannot use or build anything that will supplement or supply other communities with resources or support in any way, shape or form. All we're saying here is, give those communities the opportunity to look at the benefit so that the community can benefit and it gives them the opportunity to expand beyond just what they're using there. So if they're going to put up a wind turbine and they need five kilowatts, and they have an opportunity to put up a 20-kilowatt one and supply the next community, it ain't happening because this legislation says, "You can only look at what you're going to use, not what you can supply to anybody else or what the benefit is." We've got to make sure that those opportunities are not restricted. I find that very concerning.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Any further debate? Monsieur Bisson?

Mr. Gilles Bisson: No, I'm just reading it and I'm trying to come up to—if you would just give me a second.

The Vice-Chair (Ms. Helena Jaczek): Any further comments?

Mr. Jerry J. Ouellette: I'll ask for a recess.

The Vice-Chair (Ms. Helena Jaczek): Will the members be ready to vote, or are there any further comments? We have a twenty-minute recess, which means we will reconvene at 4:56.

The committee recessed from 1636 to 1656.

The Vice-Chair (Ms. Helena Jaczek): Members of committee, we are resuming on our vote on PC motion 13.2. It will be a recorded vote.

Ayes

Bisson, Ouellette.

Nays

Jeffrey, Kular, Mangat, Moridi.

The Vice-Chair (Ms. Helena Jaczek): That is lost.

Any further debate on section 11, as amended? Mr. Ouellette.

Mr. Jerry J. Ouellette: Mr. Bisson, go ahead.

Mr. Gilles Bisson: I just wanted for the record—as I read the legislation, a big part of the problem here is that we're basically saying to anybody who wants to invest in mining or other activities in the far north that if you plan on doing any investments, don't bother trying to do so until after a land use plan is done. You know as well as I do that a land use plan under this process might take as much as 10 years. For somebody to put up the amount of money necessary to bring a mine into production or whatever project it might be, you're talking in the millions of dollars. In the case of De Beers, it was almost a billion bucks to build that particular mine. You're going to have a hard time trying to attract investment in these communities for the next 10 years the way the legislation is drafted now.

I think the government should give pause. I realize we're in first reading, but what I heard as I was listening to the parliamentary assistant is that there seems to be an understanding on the part of the government that this is the way business will be done; there's not going to be any development. There are exemptions in the legislation, but try to exempt the mine going into operation somewhere in northern Ontario, in the far north, under this legislation—you're not going to be able to get the exemption.

I just say to government, as you're moving to second reading, you've really got to think this one through again and have some kind of a process that allows exploration and development to happen in a way that's consistent with good practices we've already established in the meantime as we work towards a land use plan. To have the legislation written this way wouldn't be accepted in any municipality in this province. Imagine if Sault Ste. Marie, Toronto or Timmins were in a position where no development could happen for 10 years as we developed some sort of land use plan. It would effectively cripple the economic activities in those communities. I think the government really needs to rethink this as they move to second reading.

The Vice-Chair (Ms. Helena Jaczek): Further comment? Mr. Ouellette.

Mr. Jerry J. Ouellette: Just to expand on that, I can recall in Chapleau when Frank Beardy spoke, and I asked him the question about how much time he was looking at, he very specifically mentioned a generation of time in order to get things the way they should be. So 10 years is an extended period of time, but a generation can be a lot longer. We're trying to move forward as best we can to make sure that those communities who are, how shall I say, more aggressive or more willing to move forward at certain times may not be losing out on some of the benefit.

The Vice-Chair (Ms. Helena Jaczek): Any further comment on section 11, as amended? Mr. Orazietti.

Mr. David Orazietti: With respect to the motions that were raised by my colleague across the floor here, 13.1 and 13.2, I just want to reference the language that's used in the amendment, that the development is predominantly

“for the benefit of the community.” The member knows, and the reality is, that if we’re going to go down this road of benefit for the community, it’s a pretty low threshold. You could really be talking about just about any type of development that could, in the smallest way, benefit any community. And while that might be fine and well, and it’s something that we want to see happen in these communities, we don’t want a patchwork of development to take place in the absence of land use planning.

That’s really a low threshold, if you will, if we’re going to simply say, “Look, if it benefits a First Nation community in any way, shape or form, you can go ahead and have the exemption, and you don’t need to do any land use planning.”

But I understand the member’s concern. We want to see development in the far north, and we want First Nations to lead that development and play an active role in it and benefit from the jobs and opportunities that will result from that.

In clause 11(3)(b), there’s an opportunity for an exemption where there are larger-scale developments that could take place that are really for the socio-economic benefit of the entire province. That’s referenced in 11(3)(b). That exemption and that mechanism are there within the bill to allow that to go forward. Clause 11(3)(a) is a reference to the minister having the opportunity to exempt developments for community use. Those mechanisms are in the bill, both at the ministerial level and at the level of cabinet, to allow development for community use—a power plant that might supply electricity to a school or what have you.

Simply to say “any type of benefit” is a fairly low threshold. I understand where you’re coming from. We do not want to be curtailing economic development, but at the same time, we want to be encouraging land use planning in the far north so that we don’t end up in a situation where we don’t have adequate land use planning and we simply have development scattered all over the far north, so to speak.

That’s the context in which we want to go forward and it’s the rationale behind why we can’t support those two motions that were put forward, albeit as well-intended as they are.

The Vice-Chair (Ms. Helena Jacek): Monsieur Bisson?

Mr. Gilles Bisson: The problem is that if I’m an investor and I’m having to make a decision about investing a large sum of money in some project in northern Ontario, and my hook is that I’m going to go and apply under clause 11(3)(b) of the bill, I’m not going to be able to raise the money. Nobody’s going to put money up, saying, “Well, maybe I can apply under clause (b),” which says that “the Lieutenant Governor in Council by order determines that the development is in the social and economic interests of Ontario.” There are going to be all kinds of people from the other side banging on the minister’s door, arguing not to have the investment—environmentalists and others.

Let’s not turn our backs on some of the successes we’ve had in the far north. Musselwhite was developed. We learned a lot through the Musselwhite project. We developed the De Beers mine. We’ve built on the successes of Musselwhite and we’ve made a better process. These mines don’t get built unless they’re permitted, they follow environmental standards and there are impact benefit agreements with the communities. There are a whole bunch of things that go into place in getting these projects online.

It seems to me the stated goal of this legislation is twofold: (1) to assist with development in the far north so that we can have economic activity for the benefit of First Nations and others, and (2) to have a land use planning process by which that’s done. It seems to me that we’re forsaking one to get the other. We’re saying, “We’re going to develop a land use planning process in the far north. It’s going to take us 10 years to get there, and in those 10 years we’re going to limit any development unless it falls under the exemption orders.” I think it’s going to be really, really hard to attract investment in those areas, coupled with what 50% of the land is actually going to be determined to be protected? We don’t know that. You don’t know that. That’s to be determined by the process.

I have a property somewhere, let’s say, by Big Trout Lake that may be high potential for some sort of mineral development, and I don’t know if that’s going to be a protected area or not, and I’m not going to know for 10 years. So why would I invest?

It seems to me that we have to have a mechanism that allows development to continue in a way that’s sustainable and follows good environmental principles, and that there’s a buy-in by First Nations, that they have a say about whether it will go forward or not, and in a parallel, we develop the land use planning process that all of these projects, in the end, will go through, once we’ve actually completed it.

I think trying to do it this way is going to be very problematic for the economic development of the far north.

The Vice-Chair (Ms. Helena Jacek): Mr. Ouellette?

Mr. Jerry J. Ouellette: Some of the concerns as well are that, for example, Lac Seul First Nation is located in traditional Nishnawbe Aski First Nations communities’ territory, which will fall into someone’s community plan. They’re not signed on with Treaty 9 or Treaty 5.

The difficulty there is if a community sees a benefit that they can use or supply to other communities. I’m sure the member from Timmins–James Bay knows very well that all First Nation communities are very much like southern Ontario municipalities, and they don’t necessarily always get along. In land use planning areas, if somebody else is getting a benefit, it may work to their advantage to move the file forward, or others could try and stop the process from expanding use in their areas. It’s like Heyden using the resources in Sault Ste. Marie without contributing to the tax base.

Anyway, that kind of lays out some of the details about some of the concerns and how, although there may

be a land use planning area, not all the individuals will be signatories who sign on to that community, and only their community can use some of the potential benefits there.

The Vice-Chair (Ms. Helena Jaczek): Mr. Orazietti?

Mr. David Orazietti: The community that you're referencing, Lac Seul, is not captured by the legislation, so this bill doesn't pertain to them.

With respect to your point, again, the concern is around simply setting aside any land use planning and saying the threshold is going to be that for any benefit whatsoever we can go ahead and do that in the absence of land use planning. We need to find a balance in terms of ensuring that there is land use planning that goes forward and ensuring that there is a way, where land use plans have not been fully developed, to allow the minister or cabinet to make those exemptions to allow the development to take place that I know you're interested in seeing and probably all members around the table are interested in seeing, as well as the First Nations.

With respect to section 11, which we're speaking to now, I understand, as opposed to the motions that are on the floor, I'm in support of section 11, as amended.

The Vice-Chair (Ms. Helena Jaczek): Any further debate on section 11, as amended? All those in favour of section 11, as amended? Those opposed? That is carried.

Moving on to government motion 14, Ms. Jeffrey.

Mrs. Linda Jeffrey: I move that subsections 12(2) and (3) of the bill be amended by striking out "Northern Development and Mines" wherever that expression appears and substituting in each case "Northern Development, Mines and Forestry".

The Vice-Chair (Ms. Helena Jaczek): Mr. Orazietti?

Mr. David Orazietti: This is simply to reflect the appropriate name of the ministry. It's a technical amendment; that's it.

The Vice-Chair (Ms. Helena Jaczek): Any further debate? All those in of government motion 14? Those opposed? That is carried.

NDP motion 14.0.1, Mr. Bisson.

Mr. Gilles Bisson: Withdrawn.

The Vice-Chair (Ms. Helena Jaczek): Any further discussion on section 12, as amended? Shall section 12, as amended, carry? Carried, thank you.

Section 13: NDP motion 14.0.2., Mr. Bisson.

Mr. Gilles Bisson: Withdrawn.

The Vice-Chair (Ms. Helena Jaczek): PC motion 14.1, Mr. Ouellette.

Mr. Jerry J. Ouellette: I move that paragraph 1 of subsection 13(2) of the bill be amended by striking out "prospecting".

The Vice-Chair (Ms. Helena Jaczek): Any explanation?

Mr. Jerry J. Ouellette: During the Lands for Life process there were allowances that took place so that in the event of a significant deposit being found, lands would be traded off. It was used in a number of different areas whereby a deposit was found—I can recall a marble deposit—and the Lands for Life territory, and the 225,000 square kilometres in this case, would still be

allowed to be maintained. There were some exemptions to allow it to move to other sections to make sure the size was the same but to allow the marble deposit, in that particular case, to move forward.

What I'm suggesting here is that "prospecting" be removed so that prospectors in those areas can continue on and, in the event that they have mobile boundaries within those areas, they can relocate those so that the prospectors can develop those potential sites that may be available there. That's why I say remove "prospecting".

The Vice-Chair (Ms. Helena Jaczek): Thank you. Further debate?

1710

Mr. David Orazietti: To be clear, existing claims can proceed, but with respect to prospecting, it's not permitted in any areas—that are not permitted in any areas in Ontario. Prospecting in protected areas is not permitted in Bill 191, so it's a consistent approach with the rest of what's taking place in Ontario, but again, existing claims can continue to proceed. We won't be supporting the proposed amendment which strikes out prospecting. It's not appropriate, if we're going to have that consistent approach with the rest of the province.

The Vice-Chair (Ms. Helena Jaczek): Further debate? No further debate? All those in favour or PC motion 14.1? Those opposed? That is lost.

PC motion 14.2.

Mr. Jerry J. Ouellette: I move that section 13 of the bill be amended by adding the following subsection:

"Exception, infrastructure development

"(2.1) Nothing in subsection(1) or (2) shall prevent a person from doing anything in relation to infrastructure development in a protected area."

The Vice-Chair (Ms. Helena Jaczek): Any explanation, Mr. Ouellette?

Mr. Jerry J. Ouellette: It's been very clearly stated that the 225,000-square-kilometre protected area will have a continuous running district from Manitoba to Quebec. The difficulty is that if you try to put an ice road through, a hydro line through, or any sort of development at all, there will be a large difficulty.

Having been the minister, I know that there were certain aspects when Lands for Life came through; people were not allowed to cross the protected areas to access their fibre in their land-owned areas. So we want to make sure that these individuals have the ability to access those sites and to cross this continuous 225,000 square kilometres, because effectively, if you don't, you're going to create a new province there because you can't get any roads up there; you can't get any infrastructure in there because it's not exempt. I want to make sure that those options are available there.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Orazietti.

Mr. David Orazietti: While I respect the intent of the amendment, I think there's a concern around infrastructure development taking place in protected areas. The reality is, that's consistent with the rest of Ontario and that's why we can't support the amendment as it's being

proposed. It's also consistent with our motions 3 and 4 that were already voted on.

Again, I think we need to have the conversations with the First Nations partners—the joint planning table—and allow the community land use plans to unfold. There are opportunities where the land, as the member has indicated, could be adjusted within their community land use plan for an area that is protected to be developed, should they decide that they would like a different area within that land use plan to be protected. That opportunity will exist within their own planning, but again, to simply allow infrastructure development in areas that are protected is not consistent with what we do in the rest of the province. Those discussions at the local level will take place with First Nations, so we can't support this amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Jerry J. Ouellette: Very specifically, this is completely different. This is talking about a continuous band running from Manitoba to Quebec. How are you going to cross anything if the Churchill lines are supposed to come down where we can't have any development there? I'm not sure the PA knows what the actual definition of a protected area is by the world's standard. There are only three things it requires, and it'll eliminate that opportunity. You're going to create an area now where—guess what?—you want to put an ice road through; well, it's a protected area. How are we going to put an ice road through a protected area for all the supplies etc.? And the list of opportunities goes on.

What this does is ensure that those opportunities remain there so that we can open up the north or continue to do the things that are there. So if we get hydro lines that potentially want to run from the Hudson-James Bay coastline for wind power development, and bring that energy down to Timmins or any of the northern communities, they won't be able to cross this protected area. We've seen it very clearly where roads were put in by the ministry—and the Ministry of Natural Resources is famous for this. They put in a road that allowed somebody to move in and then they protected the area; then afterwards, they said, "You can't use that road." I fought and fought and fought. It came up at the end of our term. We didn't have the time because the bureaucracy certainly stalled us to make sure that access on that road did not allow those individuals to remove the fibre from their own property.

This is effectively going to do the same thing. From Manitoba to Quebec, how are you going to be able to get anything up there and back if you can't cross it and you can't do anything with it? I have some strong concerns, obviously.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziatti: I appreciate the member's perspective and his past experience with the ministry, and I understand. I suppose, back to the point around designating protected areas, those designations have yet to be

determined by community land use planning in partnership with the First Nations. They may determine that certain cultural areas will not have any development in them, but protected areas could have limited infrastructure development for the purposes that you're referring to. I think that needs to take place through the land use planning process.

Mr. Jerry J. Ouellette: But the statement has been very clear that it will be one connecting link from Manitoba to Quebec. How are you going to have any breaks that you're going to allow this to go through, even if it goes through the land use planning area? You won't have any breaks if the statement is clearly made that it will run from Quebec to Manitoba.

Mr. David Oraziatti: That doesn't mean that you can't have the roads that you're referring to within the protected areas. If the community determines that it's in the best use of the community, then that will take place.

Mr. Jerry J. Ouellette: Even in a protected area?

Mr. David Oraziatti: Protected areas can have limited infrastructure development to accommodate the things that you're talking about. In the protected areas, they may determine that. Based on those designations, not all protected areas will have perhaps the same status or ability to be developed. If it's a cultural area, a burial site perhaps, they may say, "No infrastructure development in this particular area." They may have a protected area where they don't want to see any mining or forestry activity, but that's not to say that a road can't be put through that area. I think there will be opportunities for those issues that you're referring to to be addressed through the land use planning process with First Nations.

We're not talking about this hard and fast area of 225,000 square kilometres where there will be absolutely no way to travel through that region or part of the province. That's not the intent. The intent is to capture, on balance, about 50%, which is 225,000 square kilometres, and protect that. Within the protected areas, those designations that would exist through the land use planning could allow limited infrastructure development.

The Vice-Chair (Ms. Helena Jaczek): Mr. Bisson, you have a comment?

Mr. Gilles Bisson: Let's say that area A, this particular area, is designated as "no mining" because they don't think at the time that there will be any potential for mining. Try after the designation to un-designate it if they decide to go forward. Do you follow where I'm going? This is what I think Mr. Ouellette is getting at: Once you protect an area, it's very, very hard politically to basically turn the clock back. You may very well at this point determine, "We don't want a road there. We don't want a mine there. We don't want any forestry activities," because at the time it doesn't seem like a good idea, for whatever reason. Five, 10, 15 years down the road, if a change of decision is made because of some activity that's happening on the land, it's going to be very hard to undo. I guess that's part of the problem with this whole process.

The other thing, just a quick comment on the issue of trying to get access in designated areas: I can tell you, the

community of Peawanuck, and you would know that because I think you were minister at the time—they created Polar Bear Provincial Park under Alan Pope some years ago, under the Tory government. That particular park surrounds the Peawanuck area. They can't build a winter road to get goods in and out of that community because they're not allowed to go through the park. We've tried with successive ministers to get permission. I know Mr. Ouellette agreed with me because I had these conversations with him when he was Minister of Natural Resources, and even David Ramsay agreed when he was Minister of Natural Resources, but neither of those ministers was ever able to get a permit to allow the First Nations to put a winter road through to supply their communities because it would be going through a provincial park. The point is, once designated, it's designated. That's the problem.

The Vice-Chair (Ms. Helena Jaczek): Any further debate?

Mr. David Oraziatti: I understand your point. That's obviously a unique situation. Perhaps it does have some merit. I understand what you're saying. I think it takes us back to the point that you made around geological mapping, that all of this has to be done prior to any development. We're not going to have land use planning take place if we wait until every square kilometre of the far north is mapped at the level that you're suggesting.

1720

I think the flexibility remains within those land use plans to allow the First Nations to determine the priorities with which they'll proceed. If they're interested in mining because at the time they identify an area as protected and give it some limited protection because they don't want it developed at that particular time—perhaps it's not a spiritual site or a burial site, but they don't want to see it developed—and later learn that there are geological opportunities there, within their own land use plan, they can take that area or those kilometres that they've identified, that parcel of land, and determine that perhaps another area that they had anticipated would be developed within the land use plan be the protected area to allow development to go ahead.

I think there's the flexibility within that. I mean, I hear your example. It's obviously not a positive example, and there are these anomalies out there, but we need to try to work in an overall view toward development in northern Ontario and the far north in partnership with the First Nations, and I think those opportunities will be there.

The Vice-Chair (Ms. Helena Jaczek): Any further debate?

Mr. Gilles Bisson: Well, that's what Alan Pope said when he created the park, and we still can't use it. Because I've had these conversations with Alan himself, and he was the minister who designated it. Anyway.

The Vice-Chair (Ms. Helena Jaczek): Any further debate? All those in favour of PC motion 14.2? Those opposed? That is lost.

NDP motion 14.2.1, Monsieur Bisson.

Mr. Gilles Bisson: Withdrawn.

The Vice-Chair (Ms. Helena Jaczek): NDP motion 14.2.2.

Mr. Gilles Bisson: I move that subsection 13(4) of the bill be struck out and the following substituted:

“Exception, order

“(4) Subsection (1) or (2) does not apply if,

“(a) the Lieutenant Governor in Council by order determines that the allocation, disposition or use of public land and natural resources in the planning area or the development in the planning area, as the case may be, is in the significant social and economic interests of Ontario and takes into account the objectives set out in section 6; and

“(b) the council of each of the First Nations that worked with the minister under section 8 to prepare the community based land use plan for the planning area has passed a resolution approving the allocation, disposition or use mentioned in clause (a).”

Again, it just gives First Nations the ability to basically have the final say on what happens on their territory.

The Vice-Chair (Ms. Helena Jaczek): Explanation?

Mr. Gilles Bisson: Well, I thought it was pretty clear.

Mr. David Oraziatti: Just to respond, I think we talked about something similar a little earlier on with respect to trying to define or clarify “significant” without any kind of criteria.

I mean, nothing is going to preclude or take away from the fact that there's a constitutional duty to consult with First Nations. What will be significant in terms of the view of cabinet I think will be determined by the government of the day. If they determine that it is, then they'll make the appropriate decision. We don't see a need for this amendment to be included in the bill and we can't support it.

The Vice-Chair (Ms. Helena Jaczek): Any further debate? All those in favour of NDP motion 14.2.2? Those opposed? That's lost.

NDP motion 14.2.3.

Mr. Gilles Bisson: Withdrawn.

The Vice-Chair (Ms. Helena Jaczek): Any further debate on section 13? All those in favour of section 13, as amended?

Interjection.

The Vice-Chair (Ms. Helena Jaczek): To clarify, there were no amendments in section 13, so shall section 13 carry? All those in favour? Those opposed? That is carried.

Section 14 and section 15 have no amendments. Any discussion on those sections? Shall sections 14 and 15 carry? All those in favour? Those opposed? Those sections are carried.

Section 16: NDP motion 14.2.4.

Mr. Gilles Bisson: It's kind of a moot point because the other section was voted down. Withdrawn.

The Vice-Chair (Ms. Helena Jaczek): Withdrawn. PC motion 14.3.

Mr. Jerry J. Ouellette: I move that section 16 of the bill be amended by adding the following subsection:

“Other representation

“(3) When establishing a body under subsection (1), the minister shall ensure that the body includes representatives of hunting, trapping and angling organizations.”

The Vice-Chair (Ms. Helena Jaczek): Any further explanation, Mr. Ouellette?

Mr. Jerry J. Ouellette: A lot of these organizations are concerned about exactly how these are going to be implemented. If they are part of the process—although only a small representation is necessary—in order to get an understanding of how it’s moving forward and how they can work together in possibly benefiting a lot of these communities when they are doing their land use plans, then it will be a lot easier, as opposed to afterwards making comments and finding out how it’s going to affect them. It’s just a way of minimizing the potential negative impact at the time. I think it will be the most prudent way to do it.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Oraziatti: I recognize where the member’s coming from with this amendment. We’re concerned that perhaps we’re going to be singling out specific groups—hunting, trapping and angling organizations—to the exclusion of other groups that might have an interest and involvement, and it would be difficult, I think, to treat them differently within the legislation. While they may be involved, and we certainly encourage them to be involved and hope they are, we want to ensure that anyone in any other organization—we know that there are a number of groups and organizations throughout the province that would want to be part of advisory bodies or to in some capacity advise the minister or the government of the day with respect to these plans, so we don’t want to narrow it down to this focus.

Again, I would assume, going forward, that the organizations that the member has referenced here may very well be included in some advisory capacity, but we can’t support this particular motion.

The Vice-Chair (Ms. Helena Jaczek): Any further debate?

All those in favour of PC motion 14.3? Those opposed? That is lost.

NDP motion 14.4.

Mr. Gilles Bisson: I just realized that it was a different amendment from the other one.

I move that section 16 of the bill be amended by adding the following subsection:

“Far North Science Committee

“(3) In carrying out its functions described in subsection (1), the Far North Science Committee shall,

“(a) review the environmental conditions of the far north and provide advice to the minister with respect to the scientific research that needs to be pursued to support the implementation of the objectives set out in section 6;

“(b) review the far north land use strategy, including the far north policy statements contained in the strategy, before the strategy is completely prepared and provide advice to the minister on the strategy;

“(c) review every amendment to the far north land use strategy, including the far north policy statements contained in the amendment, before the amendment is completely prepared and provide advice to the minister on the amendment;

“(d) upon request, provide advice to the minister or a First Nation working on preparing a land use plan for the purposes of section 8;

“(e) upon request, provide advice to the far north land use planning commission;

“(f) review a land use plan, of which notice is given to the public under clause 8 (7)(b), and provide recommendations to the minister, the far north land use planning commission and the First”—

I withdraw. As I’m reading it, I’m recognizing that it’s going back to the one that was defeated. I apologize. I didn’t see that.

The Vice-Chair (Ms. Helena Jaczek): Thank you, Monsieur Bisson.

We move on to government motion 15.

Mrs. Linda Jeffrey: I move that section 16 of the bill be struck out and the following substituted:

“Advising bodies

“16(1) The minister shall establish one or more bodies to advise the minister on matters relating to this act.

“Joint body

“(2) The minister shall invite the First Nations having one or more reserves in the far north and one or more First Nations not having a reserve in the far north to participate in discussions with the minister with respect to establishing a joint body to,

“(a) advise the minister on the development, implementation and coordination of land use planning in the far north in accordance with this act; and

“(b) perform the other functions to which the minister and the First Nations that participate in the discussions agree.

“Content of discussions

“(3) The discussions shall focus on factors relevant to establishing the joint body, including,

“(a) the criteria that members of the body must meet to be eligible to be appointed to the body;

1730

“(b) the functions of the body;

“(c) the procedures that the body is required to follow in carrying out its functions, including the frequency of its meetings and the selection of a chair or two or more co-chairs for it; and

“(d) any other matters that the minister and the First Nations that participate in the discussions agree to with respect to establishing the body.

“Establishment of body

“(4) If the First Nations that participate in the discussions and the minister make a joint recommendation to establish the joint body, the minister shall,

“(a) take into account the discussions and establish the joint body in accordance with subsections (5) and (6); and

“(b) ensure that the instrument establishing the body sets out the functions of the body as described in subsection (2).

“Only one joint body

“(5) The minister shall not establish more than one joint body.

“Composition

“(6) The joint body shall be composed of the following in equal numbers:

“1. Members of First Nations.

“2. Representatives of the government of Ontario.”

The Vice-Chair (Ms. Helena Jaczek): Explanation, Mr. Orazietti?

Mr. David Orazietti: I referenced this earlier in our discussions today about creating a joint body or advising bodies that would see the First Nations play a role. I think it speaks to the co-operation and partnership that we want to see going forward in the land use plans that are being developed in the far north. But again, we're at a fairly early stage and want to continue to have further discussions with the First Nations in terms of how this can be most effective. This does give it some formality, I suppose, in the legislation, and that's the intent of the amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Ouellette?

Mr. Jerry J. Ouellette: I would ask, how are the members of the First Nations selected? What is the deciding body which, by the decisions made, chooses which individuals will represent which aspects of the First Nations?

Mr. David Orazietti: I think that's a conversation that we need to have with the First Nations. If they're going to play a role in any of the advisory bodies, the First Nations will determine who best speaks for them and who best represents them on these committees and advisory bodies. I don't think that's something that the government wants to be determining or deciding on behalf of First Nations.

Mr. Jerry J. Ouellette: Then would it not be prudent to include “as selected by the First Nations” in there? Because as it is now, it just says “members of First Nations,” which effectively could mean that they could be appointed by the government.

The Vice-Chair (Ms. Helena Jaczek): Any comment, Mr. Orazietti?

Mr. David Orazietti: If you just give me one minute, as there's a suggestion here to amend the motion.

Clause (3)(a), “the criteria that members of the body must meet to be eligible to be appointed to the body,” references specifically conversations with First Nations in terms of how they would like to determine, or what criteria they would like to see in place in terms of who would be eligible for the body. That discussion hasn't taken place yet. That's part of what's intended by the amendment. It would seek to engage the First Nations and have that discussion and have them play a role in determining the criteria. You're saying that—

Mr. Jerry J. Ouellette: If that's the case, put it in.

Mr. David Orazietti: Well, that is in; that's what I'm saying. Clause (3)(a) does address that: “The criteria that members of the body must meet to be eligible to be appointed to the body.” That's part of the discussion that's going to take place with First Nations.

The Vice-Chair (Ms. Helena Jaczek): Monsieur Bisson?

Mr. Gilles Bisson: Well, (3)(a) says that, but not quite. What it says is that the minister and the representatives of the First Nation shall meet, they shall have a discussion, they shall talk about the composition of the committee, but it doesn't say that at the end it's the First Nations who decide the membership from their side. I think we should allow the First Nations to determine themselves who's going to represent them. The way this reads, you could end up having to have the minister's approval, as this is written.

Mr. Jerry J. Ouellette: Part of it, for those who haven't dealt with a lot of First Nations, is that First Nations refuse to participate in the activity. I can remember when I was the PA for Northern Development and Mines, there was a mining review committee whereby the First Nations refused to sit as part of the committee because if they became a committee member, then they could be perceived in the courts as being equivalent to the individuals who are other representatives as opposed to being, as stated by the federal government, nation to nation.

The point here is that in the event that First Nations refuse to participate in the activity because they do not support or believe in it, then the government has the opportunity to select the individuals that they wish to represent and still continue on with the process as opposed to allowing the First Nations to do it. That's part of the reasons that I hadn't mentioned in the past; I've been exposed to it and seen it happen on a number of different pieces of legislation and committees out there. I'm just concerned that in the event that they decide not to participate, the government will just select individuals to represent them.

Mr. David Orazietti: Back to what is fundamental in the motion is that we're talking about a joint advisory body with equal representation, right? That joint advisory body, in partnership with the First Nations and government, will determine the criteria. The assumption that would follow is that the First Nations would need to agree to the criteria set up equally. They'd have just as much say in terms of who would represent them and the criteria that would be used, so I think that discussion with the joint planning body needs to take place first.

I understand what you're saying; I think it's included in the amendment in the sense that if we don't get agreement from the First Nations on the joint planning body, they could walk away from that to begin with, and you don't even have a joint planning body. If they're interested in being at the table in an equitable partnership of participating in this joint body, then that body that has equal representation, First Nations and government, will

determine the criteria for individuals to be on the advisory bodies. I think it's dealt with in the amendment.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. Gilles Bisson: I hear what you're saying, and to an extent you're doing that, but you're not. What the joint body does under subsection 2(a) is advise the minister, right? This is all a discussion in order to give the minister advice on what the criteria will be and who will be the representative of the First Nations, right? All we're saying is that at the end of the day the First Nations should be in a position of being able to say, "Here are the people that we want to sit on these committees. They are our picks; deal with these people." We should allow them that courtesy. That's why we're trying to get—

Mr. David Orazietti: You know what? On that point, I would expect that to happen. I would expect that to take place. The concern is that this is just advice, and the First Nations will come forward and say, "These are the people that we have, in good faith, put forward to be part of this committee," and the minister, for whatever reason, decides that they're not interested in doing that. That obviously is not going to sit very well with the First Nations and put at risk, frankly, the whole joint planning process. No one's interested in doing that.

At the end of the day, we're going to need some level of agreement through mutual consent, through this process. I think you've got a process here through this amendment that allows a joint body to go forward, and within that there's a framework that establishes how the criteria would be set out in that joint planning process. If individuals decide to walk away from that process because they feel they're not satisfied with it, then that calls into question the entire body. I think any government and any minister would be ill advised to not respect the decisions of the First Nations when it comes to the intent of this and the intent of putting people forward in good faith to be part of those committees.

Mr. Gilles Bisson: But there's a very long history of ministers not accepting the advice of First Nations in this province. I'm not just pointing at your government; that has been the history, unfortunately, unless it was developed in First Nations. It just seems that if we really believe this is a joint process, we need to give the First Nations the comfort of knowing that at the end of the day they get to pick their people. It just seems to me that's a bit of a no-brainer. In the end, you know what? The First Nation may very well appoint somebody that the minister doesn't want, but so be it. They may not want the minister from the other side, you know what I mean?

1740

To me, one of the fundamentals is that they be allowed to choose who's going to be at the table. When we went through the discussion on the round tables following the revenue-sharing bill, it was the First Nations who decided who was going to be at that table. I'll tell you, there were some people at the table that ministers probably didn't want, but they were the representatives. It's the same way that people voted you and voted me in to this place to do

the work of the people of our ridings. It may not be somebody's choice but it's the one that was afforded our constituents.

Mr. David Orazietti: Right.

The Vice-Chair (Ms. Helena Jaczek): Further debate? Mr. Ouellette?

Mr. Jerry J. Ouellette: As I mentioned before, there is a precedent whereby three consultation occurrences then allows the federal government to allow an arbitrator to come in and resolve the issue. So First Nations are very reluctant to get involved and to participate in activities, in the event that it could be, in the eyes of the courts, perceived as being a consultation process or something. Thereby the difficulty comes when they're coming forward and saying, "Look, we don't want to participate, in the event it could be considered a consultation. Who are we going to get?"

A lot of the time, the government may pick individuals, and if they're the wrong individuals—I mean, government always goes with the best advice they have. The difficulty is that you may upset other First Nations communities and it would work to your disadvantage. But if they're the ones who are required to pick those individuals, it's not a choice of the government; the names have been put forward by the First Nations communities to allow them—and I hear what you're saying, that you believe it's in there. "The joint body shall be composed of the following in equal numbers: 1. Members of First Nations"—to simply say "as selected by the First Nations" would certainly resolve a lot of that.

The Vice-Chair (Ms. Helena Jaczek): Further debate?

Mr. David Orazietti: I fully expect that to happen, that the First Nations are going to determine how and in what format is the best way for them to proceed with criteria within their own groups, where they will see fit, in putting people forward for this particular committee or any advisory bodies. I would expect the government of the day to respect the decisions of the First Nations.

It kind of begs the question, if there's no trust in the process, then you're not going to have a joint body, you're not going to have any advisory planning.

I hear where you're coming from: the sense that First Nations, by agreeing to be part of the process, are perhaps somehow condoning it or giving up some autonomy in some way. I think they also understand that they want government to hear their views and understand where they're coming from when it comes to issues like land use planning. If there's an agreement that there will be equal representation that will engage First Nations, I think they can be satisfied that they're participating in a process that respects their autonomy and their views—and who would be selected within their communities to be part of these advisory bodies.

The position of the government is not to be too prescriptive on this issue. We believe that we have a good relationship with First Nations to allow a joint body or advisory body to go forward, and that the criteria—that topic, that issue that you have raised, which is an

important one—will be part of that process. And because there is a balance on that committee, we expect there to be agreement in whatever format that takes, and that will be something that the First Nations will be supportive of because it will be, in large part, their decision-making in terms of how individuals arrive on those advisory bodies.

That's all I have to add at this point.

The Vice-Chair (Ms. Helena Jaczek): Any further debate? All those in favour of government—

Mr. Gilles Bisson: Recorded vote.

The Vice-Chair (Ms. Helena Jaczek): A recorded vote.

Mr. Gilles Bisson: And I'll have a 20-minute recess.

The Vice-Chair (Ms. Helena Jaczek): The time being 5:44, this committee will resume on Wednesday, October 21, at 4 p.m. At that time, we will be voting on government motion 15. That adjourns this meeting.

The committee adjourned at 1745.

CONTENTS

Monday 19 October 2009

Far North Act, 2009, Bill 191, Mrs. Cansfield / Loi de 2009 sur le Grand Nord, projet de loi 191, <i>M^{me} Cansfield</i>	G-1101
---	--------

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziatti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. Reza Moridi (Richmond Hill L)

Mr. David Oraziatti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Joe Dickson (Ajax–Pickering L)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Mr. Jerry J. Ouellette (Oshawa PC)

Also taking part / Autres participants et participantes

Ms. Jessica Ginsburg, legal counsel, Ministry of Natural Resources

Ms. Afsana Qureshi, far north policy manager,
far north branch, Ministry of Natural Resources

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. Michael Wood, legislative counsel

G-45



G-45

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 21 October 2009

Journal des débats (Hansard)

Mercredi 21 octobre 2009

Standing Committee on General Government

Far North Act, 2009

Comité permanent des affaires gouvernementales

Loi de 2009 sur le Grand Nord

Chair: David Orazietti
Clerk: Trevor Day

Président : David Orazietti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 21 October 2009

Mercredi 21 octobre 2009

The committee met at 1603 in room 151.

FAR NORTH ACT, 2009

LOI DE 2009 SUR LE GRAND NORD

Consideration of Bill 191, An Act with respect to land use planning and protection in the Far North / Projet de loi 191, Loi relative à l'aménagement et à la protection du Grand Nord.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. As we're continuing with the Far North planning bill, Bill 191, I'm going to ask Bill Mauro, the MPP for Thunder Bay—Atikokan, to take the chair, and I'll be able to fulfill my responsibilities as the PA to the Minister of Natural Resources. So if we could do that, we can continue on with clause-by-clause.

The Acting Chair (Mr. Bill Mauro): The first order of business, then, everyone, as I understand it, is a recorded vote on government motion 15.

Ayes

Kular, Mangat, Moridi, Oraziotti, Rinaldi.

Nays

Bisson, Ouellette.

The Acting Chair (Mr. Bill Mauro): That is carried. Shall section 16, as amended, carry? All in favour? Opposed? Carried.

Section 17: There are no amendments. Shall section 17 carry? Opposed? Carried.

Section 18: We have NDP motion 15.1, Mr. Bisson.

Mr. Gilles Bisson: And it is withdrawn.

The Acting Chair (Mr. Bill Mauro): Motion 15.1 is withdrawn. So there are no amendments there.

Shall section 18 carry? All in favour?

Mr. Gilles Bisson: I still have an amendment under 18.

Interjection: Section 18.1.

Mr. Gilles Bisson: Oh, okay. Sorry.

The Acting Chair (Mr. Bill Mauro): That's a new section.

Shall section 18 carry? All in favour? Opposed? That's carried.

So we have the NDP, a new section, 18.1, motion 15.2. Mr. Bisson.

Mr. Gilles Bisson: I move that the bill be amended by adding the following section:

"Review of Act

"18.1(1) The minister shall undertake a periodic review of this act at least every five years, beginning from five years after this section comes into force, with a view to proposing amendments to this act.

"Participation of First Nations

"(2) In undertaking the review, the minister shall provide opportunities to First Nations to,

"(a) provide feedback on how the minister should undertake the review; and

"(b) provide meaningful input during the review.

"Report

"(3) The minister shall prepare a report of the review, lay the report before the assembly if it is in session, deposit the report with the Clerk of the Assembly if the assembly is not in session and provide a copy of the report to the First Nations."

It's fairly straightforward. I think it would be fair to say that this is uncharted ground. We are going to be implementing, if this bill passes, a planning process for First Nations north of Highway 11 where none currently exists. I'm going to say that none of us can clearly say with certainty that, at the end of the day, we've got the process perfect. So what this tries to do is insert a process that says, "All right, what have we learned after this bill has been enacted? Actually, we've got the plans up and running to take a look at, does there need to be any change to the legislation that allows us to do that?"

The Acting Chair (Mr. Bill Mauro): Further debate?

Mr. David Oraziotti: With respect to the motion that has been put forward, I certainly appreciate where the member is coming from on this motion. As the member knows, within the legislation, we have indicated that there will be a review at least within every 10-year period—as well, the policy statements that would be included.

There are a couple of other points I guess we could add on that. Forest management plans as well as provincial plans, such as the greenbelt and the review of the Oak Ridges moraine—those review periods are at least within 10 years. There's some consistency with existing legislation and precedent in that area.

So you might very well be right that the review may take place sooner than that—perhaps sooner than five—but I think we're satisfied that the legislation has the mechanism in there where that can be reviewed, and it's consistent with a number of other pieces of legislation and review practices already in place in the province of Ontario. That's really why we can't support this amendment.

The Acting Chair (Mr. Bill Mauro): Mr. Ouellette?

Mr. Jerry J. Ouellette: I just ask the member if he could give a further definition as to (2)(b), "provide meaningful input during the review." If you could give it from two perspectives: What is meaningful in regards to the First Nations and meaningful in regards to the government or the ministry?

Mr. Gilles Bisson: Well, the fear is that what you end up with is more of the same when it comes to First Nations, that a consultation is deemed to be a fly-in meeting in some community, having a one- or two-hour conversation, and then everybody leaves and you say, "Okay, you've had your consultation."

First Nations are taking this process seriously. They actually want to have a planning process, as you well know, but they want to make sure that it works in the end. But important to them is, they want to know that they have a meaningful role in whatever happens at the end. So the term "meaningful" is to say you just can't fly into a community, have a two-hour conversation and then leave. There has to be more to it than just that.

The Acting Chair (Mr. Bill Mauro): Further debate? Seeing none, shall new section 18.1, NDP motion 15.2, carry?

Mr. Gilles Bisson: Recorded vote.

Ayes

Bisson, Ouellette.

Nays

Kular, Mangat, Moridi, Oraziatti, Rinaldi.

The Acting Chair (Mr. Bill Mauro): The motion is lost.

We have sections 19 and 20 with no motions or amendments, so I'll call the question on both together. Shall sections 19 and 20 carry? All those in favour? Opposed? Carried.

Section 21: NDP motion 15.3, Mr. Bisson.

1610

Mr. Gilles Bisson: I move that section 21 of the bill be amended by adding the following subsection:

"(2) Section 9 of the act is amended by adding the following subsection:

"First Nation's use

"(6) Despite anything in this act except for section 16, nothing shall prevent a First Nation within the meaning of the Far North Act, 2009 from carrying on any activity in a provincial park or conservation reserve."

You'll wonder why I put that there. I've spoken to this a couple of times already. From the experience that First Nations have had to date, there have been a couple of instances where provincial parks and/or set-asides have been created within their traditional territory, and in some cases with very little in the way of any kind of input or discussion with the First Nation. They just wake up one morning and they find out an act has been passed in the Legislature, such as the one that created the Polar Bear Provincial Park, and all of a sudden they have been barred from having access for traditional use. We're not talking about development here, we're talking about being able to go out and hunt, gather, fish, trap—the traditional uses that they've done for the last 2,000 years. What NAN has told me in my conversation with them and with some of the communities is that they really fear that we're going to have a repeat of the past: that what will happen is that we will end up protecting some piece of land, and somewhere down the process a community member who was not aware of the process of the Planning Act all of a sudden finds out that the place where they've normally gone and gathered or hunted or fished or whatever is now off limits. So it's to make sure that we respect what the Constitution of Canada says about the rights of indigenous people when it comes to their traditional way of life.

The Acting Chair (Mr. Bill Mauro): Further debate?

Mr. David Oraziatti: The motion, although certainly well intended—and I understand the member's comments. First of all, the constitutional requirements and duty to consult are clear with respect to any of these types of changes. I think the member is perhaps aware that the government has a motion—the next motion, actually, that we'll be dealing with—that deals, in fact, with this issue and does allow First Nations the opportunity to ensure that those lands that they see fit to be used for cultural purposes, whatever it might be—including development as well, because that's something that I think we want to ensure First Nation communities have the opportunity to do, participate in the economic livelihood of this province. That mechanism is included and refined to some extent in government motion 16, which changes section 21, and that's the issue around areas that are designated as protected areas that can be swapped or exchanged for areas that they may choose to view differently or act on in terms of cultural significance or economic development.

There is a concern as well with this motion that it speaks to only those in Treaties 5 and 9, and there are some concerns that there are implications for First Nations groups outside of this area; in other words, southern Ontario. So we can't support this motion, and I think we have a motion that will be discussed next that will deal with Mr. Bisson's concerns.

We did have some discussion on this topic on Monday, and I think you're right with respect to the concerns that First Nations have around the ability and the term "park," perhaps, and the use of the term "park" in the far north and the view that we should be talking about pro-

tected areas and various designations of protected areas and the types of uses that can go on in protected areas, which I believe we're going to continue to have a further discussion around.

I think we all know that the First Nations communities want to be assured and want to have some assurance that they can continue to engage in their traditional activities as well as economic development in these lands. So we can't support this particular amendment.

The Acting Chair (Mr. Bill Mauro): Further debate? Seeing none, we'll call the question—

Mr. Gilles Bisson: I was waiting for Mr. Ouellette, sorry.

The Acting Chair (Mr. Bill Mauro): Mr. Ouellette?

Mr. Jerry J. Ouellette: Something within that, "Despite anything in this act, except for section 16, nothing shall prevent a First Nation within the meaning of the Far North Act, 2009 from carrying on any"—wouldn't it be better if it were "traditional activity"? Some of the difficulties, I think, as the PA mentioned, would be, does this not open up to all First Nations any other First Nations' traditional land?

I realize the intent. I just want make sure that when aspects like this come forward, your intention is to make sure that those who are occupying and using those areas are the ones who have access to it.

Mr. Gilles Bisson: I wanted to speak to that. I see what you're saying as far as putting in the word "traditional," and that's probably not a bad idea. But to the issue, and the parliamentary assistant spoke to it, you're also going to allow other First Nations people outside of Treaty 9 and Treaty 5 to participate. If you're living in southern Ontario on a reserve somewhere, you don't have a traditional claim to lands on the James Bay. They're totally disconnected.

The problem is that far too often the land is set aside as a park and by the time the person realizes that it's happened, it's like the horse has bolted out the barn doors. There are all kinds of examples around the creation of various parks in northern Ontario where First Nations found themselves in a situation, because they live in isolated communities—they don't get the Toronto Star every day; many of them don't have the Internet; the only thing they listen to is maybe Wawatay Radio and CBC North. But if you don't happen to catch a show that says there's a park being created in your corner, you don't know. So the next thing you know, there's a park created and you don't have traditional access.

The concept of the government—I understand what they're trying to do. They're saying in their amendment they're going to allow swapping. So if this block of land in the north part of the park that's being created is in conflict with somebody's traditional use, you might trade off a piece of land more to the southeast or west that would be suitable for the individual to use. The problem is, that could be a pretty long distance away. For those of you who have travelled the James Bay and travelled the Hudson Bay, Polar Bear Provincial Park is bigger than most of your ridings all put together. If you're trying to

say in the case of, let's say, Peawanuk, "George Hunter, you can no longer do traditional access, so therefore we're going to give the Hunter family access to some place to the west," that some place to the west may be 200 or 300 miles away. How do you make that happen?

What we're trying to say is, this is not meant for development. What it's meant for is traditional use—that a First Nations member doesn't find themselves in a situation of having closed to them access to traditional lands that they have used for centuries in order to gather food and do traditional ceremonies. I just want to remind members that the gathering of food is part of the grocery shopping list that you have in the north. Many people living in places like Attawapiskat or Marten Falls or Peawanuk or Big Trout Lake don't go to grocery stores to get all of their food; a lot of their food comes from the land. They catch geese; they can their geese; they catch moose; they catch fish, and that's how they survive for a big part of the year because (a) it's traditionally what they do and (b) in some cases they can't afford the price at the northern stores.

We're just trying to make sure that, at the end, we don't throw the baby out with the bathwater when it comes to a First Nations individual's right to have traditional access to the ground that they normally have had, and we don't get caught up in situations like we did at Polar Bear Provincial Park. So I'd be prepared to accept the amendment as proposed by Mr. Ouellette that would add—

Mr. Jerry J. Ouellette: "Traditional".

Mr. Gilles Bisson: "Traditional activity"—and that would be inserted where again? Nothing shall prevent First Nations from carrying on "traditional" activity just after the word "any," adding the word "traditional" before "activity".

The Acting Chair (Mr. Bill Mauro): We'll need Mr. Ouellette to move that.

Mr. Jerry J. Ouellette: Yes, I move that NDP motion 15.3 be amended by adding the word "traditional" after the word "any" and prior to the word "activity".

The Acting Chair (Mr. Bill Mauro): Any debate on the amendment? Mr. Orazietti.

Mr. David Orazietti: I guess, to get back to the point with respect to Mr. Bisson's concerns around access, nothing in the legislation is—

1620

The Acting Chair (Mr. Bill Mauro): Sorry, are you speaking to the amendment or to the original motion?

Mr. David Orazietti: I can't support the amendment.

The Acting Chair (Mr. Bill Mauro): So you're speaking to the amendment?

Mr. David Orazietti: I can't support the amendment or the motion, but with respect to the amendment—

The Acting Chair (Mr. Bill Mauro): Right now we're debating the amendment.

Mr. David Orazietti: I understand. The amendment to the amendment.

The Acting Chair (Mr. Bill Mauro): Yes, thank you.

Mr. David Oraziotti: In the provincial parks act, section 4 of the act indicates that traditional activities that continue to be of interest to aboriginal peoples in Ontario can go on in parks, and nothing precludes that from taking place. So with respect to this amendment, it's really not necessary. That protection is already in the provincial parks act. This is from the provincial parks act, section 4: "Nothing in this act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples"—in other words, hunting, gathering, those types of things—"of Canada as recognized and affirmed in section 35 of the Constitution Act, 1982." So this is in there.

The aspect that you're talking about, with regard to boundaries of parks, or perhaps deregulation of a park or a portion of a park for economic activity or other activity that may be of interest to the First Nations within the land use planning framework—there is provision in section 21, and the next motion that we will be dealing with will speak to the issue around deregulation and the opportunities for First Nations. We're willing to have those discussions, and I understand there are some that are actually taking place at present. There are other opportunities, and I think this will make it very clear in the legislation that the deregulation of a provincial park or a portion of a park will be entertained, as we all recognize the concerns of the First Nations in the far north around those boundaries that have been drawn for provincial parks that some may suggest are arbitrary, to some extent. I think there are some other good examples—that they're protecting some ecologically sensitive areas and there's a reason for putting them there—but we're willing to have that discussion.

The protection that you're referring to around traditional use is already contained in section 4 of the parks act. We feel that's adequate and there's really not a reason to move forward with this amendment—either the amendment to the amendment or the original amendment.

The Acting Chair (Mr. Bill Mauro): Further debate on the amendment? Mr. Ouellette.

Mr. Jerry J. Ouellette: So what the PA is saying is, effectively, what is said here is already in the act and taken care of. Correct?

Mr. David Oraziotti: What I'm saying is that the issue that has been raised around hunting and gathering—traditional activities—is in the parks act.

Mr. Jerry J. Ouellette: So the intent of this amendment is already in the—

Mr. David Oraziotti: The parks act.

Mr. Jerry J. Ouellette: —parks act. Right. So what is the difficulty with including this to give some certainty to the First Nations communities, if it's already there and it's not going to change anything? I mean, how does it negatively impact anything if it's going to be included?

Mr. David Oraziotti: They already have that certainty within this framework, within the parks act. We also have a motion, or a proposed amendment, to deal with the

issue around development or deregulation of parks. So we're going to go further in the next amendment. I mean, there's no point to this amendment.

The Acting Chair (Mr. Bill Mauro): Mr. Bisson.

Mr. Gilles Bisson: The problem is that, yes, there is in the parks act a provision to supposedly allow people to have traditional use. The first part of the problem—you would know as minister that we've had problems in the past where the crown has taken the position that in fact there be no hunting in a particular park, even if it's traditional use, and we've had to go to court in order to deal with that issue.

The second thing is—I'd be interested to hear what leg counsel has to say—just because it's in the provincial parks act doesn't necessarily mean that that authority would exist under the far north planning act, unless you specify that in the legislation. I'd just question the leg counsel.

Mr. Michael J.B. Wood: I don't actually have section 4 of the Provincial Parks and Conservation Reserves Act in front of me. I'd like a chance to get it, or perhaps in the interim—

Mr. Gilles Bisson: He has it there.

Mr. Michael Wood: —the ministry staff could assist.

Mr. Gilles Bisson: There's a section in the parks act that deals with parks created under the parks act. If you're creating a protection area under the far north planning act, it's not necessarily a provincial park. They're two different authorities, right?

Mr. Michael Wood: I can offer some observations, but I caution that anything that I say—

Mr. Gilles Bisson: Can and will be used against you.

Mr. Michael Wood: Yes. You should also check with legal staff from the Ministry of Natural Resources, which administers the Provincial Parks and Conservation Reserves Act.

Section 4 seems to be a very standard provision that's in a number of acts, and it talks about preserving "existing aboriginal and treaty rights." That may be different from what this motion says, which talks about preserving the right to carry on an activity in a provincial park or conservation reserve.

Mr. Gilles Bisson: That's my view, and that's why we brought it forward.

Mr. David Oraziotti: I understand your position. I think it's fairly clear that this is consistent across the board. The protection is there within the parks act. That has been stated.

In section 3 of this bill, it says, "This act shall be interpreted in a manner that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult." The spirit of that within this legislation is there. The parks act indicates that those traditional activities that you're referring to are protected under legislation.

With respect to the amendment, the wording that you've used here is that "nothing shall prevent a First Nation within the meaning of"—that seems to maybe go

beyond what the traditional activities are, in terms of the wording that you're using. So I have some concerns—

Mr. Gilles Bisson: Then you can suggest better language, if you want. I'm open to that.

Mr. David Oraziotti: I think we have it addressed, both within this legislation, in section 3, and within section 4 of the parks act. I think the issue has been addressed. As well, we have an amendment coming forward that will deal the other issues around deregulation of parks.

The Acting Chair (Mr. Bill Mauro): Mr. Ouellette.

Mr. Jerry J. Ouellette: I'm going to ask legislative counsel, how would this in the parks act apply to non-treaty First Nations communities that live in the north? We had a number of presenters who did not sign Treaty 9 or Treaty 5 and were found within the Far North Act, and they were not being bound by any treaty.

Mr. Michael Wood: I think it would be more reasonable to direct the question to legal staff at the Ministry of Natural Resources, which administers the act.

I offered an opinion earlier with respect to an interpretation of the motion, but your question goes beyond interpreting the motion; it involves interpreting the act.

The Acting Chair (Mr. Bill Mauro): Can I just ask you, please, to state your name?

Ms. Jessica Ginsburg: Jessica Ginsburg, legal counsel for Ministry of Natural Resources.

Your question, as I understand it, was how the non-derogation clause of the PPCRA, which is section 4, would be applied to non-treaty groups in the area of the far north.

Mr. Jerry J. Ouellette: The chief from Attawapiskat made a presentation and said that they were not signatories to Treaty 9 or Treaty 5 and had not signed a treaty agreement. I believe we had one other presentation from another First Nations community that had not signed on. So I'm wondering how the parks act would then apply—because it specifically states “treaty”—to First Nations communities who are not signatories to a treaty.

Ms. Jessica Ginsburg: Unfortunately, I was not actually in attendance at all of the hearings, so I don't know the specific situations of the different groups that you would have heard presentations from. Speaking in the hypothetical, therefore, there could be groups in the area who—and again, this is a bit difficult because I don't know the specifics. There could be groups who are signatory to a different treaty who are not far from that area. For example, Treaty 3 is not too far. It's still one of the northern treaties. So there could be individuals who are saying that their ancestors were signatory to a different treaty, or there could be individuals—this is all in a historical context, because of course most of the treaties precluded the lifetime of the individuals who would have been speaking—who were saying that their group or their family did not sign any treaty. It depends, really, on what the assertion is of the group that you're dealing with. There could certainly be people in that area who would claim aboriginal rights as opposed to treaty rights. If they were able to establish that they did hold

aboriginal rights, you can see that section 4 speaks to both aboriginal and treaty rights.

1630

As I said, it's a bit hard to know what they would be able to establish by way of what their legal rights are, and it's hard to even know what they would be asserting that their legal rights are. In theory, they could be asserting either that they have treaty rights under a different treaty or that they were not signatory to a treaty and thus held aboriginal rights. I'm not really sure, in the absence of more specifics.

Mr. Gilles Bisson: Just a follow-up question: The parliamentary assistant talked about the rights afforded First Nations under the parks act. Would that particular section apply to lands that are protected under the far north planning act? Would the parks act apply?

Ms. Jessica Ginsburg: If it's a provincial park or a conservation reserve, you have the PPCRA, the Provincial Parks and Conservation Reserves Act. The Far North Act does include its own provision, which the parliamentary assistant did quote to you, but if you look in the Far North Act, under section 3, it's not word for word the same as section 4 of the Provincial Parks and Conservation Reserves Act, but it's quite similar.

Section 3 says, “This act shall be interpreted in a manner that is consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution Act, 1982, including the duty to consult.” This is the interpretation clause for the protected areas that would be falling under the Far North Act.

Mr. Gilles Bisson: No, I understand what's said in section 3. My question is, the parliamentary assistant referred to language in the parks act that affords the ability, despite all, to have traditional use of a park. That's what I'm wondering. Does that section apply to lands that are protected under the Far North Act?

Mr. David Oraziotti: I think the spirit is the same, particularly section 3 in the act we're dealing with right now, with Bill 191. It doesn't specifically say “individual treaties 5 and 9”; it says “aboriginal rights.” So to your point around broader aboriginal rights as opposed to treaty rights, it includes both.

The traditional activities you're talking about are included in this legislation in section 3, that there is protection “consistent with the recognition and affirmation of existing aboriginal and treaty rights in section 35 of the Constitution....” So it's in the existing legislation, and it's again reinforced in the parks act.

I think we're there. I understand where you're coming from because I know what you're hearing from First Nations communities around this. I think those traditional activities are being provided for and are being protected within this legislation. It's already there.

Mr. Gilles Bisson: I understand that argument. My question, though, is, you read a section of the parks act, and that section of the parks act referred to having traditional access—and I forget what the language was. You read it a little while ago.

Mr. David Oraziotti: It says, "Nothing in this act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35"—the same reference in this legislation—"of the Constitution Act, 1982." So the language is very similar.

Mr. Gilles Bisson: It's a non-derogation clause, but that section doesn't specifically say that you still have traditional access. I thought you had read something in the parks act that was similar to the motion that I had been proposing. That's not the case.

Mr. David Oraziotti: That's your interpretation of it. Section 4 of the parks act allows for the protection of traditional activities: "The protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada," consistent with "section 35 of the Constitution...."

Mr. Gilles Bisson: All right. I hear you.

The Acting Chair (Mr. Bill Mauro): Further debate? Okay, so we'll call the question on the amendment, motion 15.3.

Mr. Gilles Bisson: Recorded vote.

The Acting Chair (Mr. Bill Mauro): A recorded vote has been asked for.

Mr. Gilles Bisson: This is the amendment to the amendment, right?

The Acting Chair (Mr. Bill Mauro): The amendment to the amendment. What we're voting on is that the word "traditional" would be inserted in place of the word "any"? Correct?

Mr. Gilles Bisson: It would be after the word "any."

The Acting Chair (Mr. Bill Mauro): After the word "any"? I see; I'm sorry. The word "traditional" would be inserted after the word "any" and before the word "activity".

Ayes

Bisson, Ouellette.

Nays

Kular, Mangat, Moridi, Rinaldi.

The Acting Chair (Mr. Bill Mauro): The amendment to the motion is lost.

Is there further debate on motion 15.3?

Mr. Gilles Bisson: No, I've made the point. It's just that it's a real source of irritation for many people where I come from. That's the reason we're bringing this forward.

The Acting Chair (Mr. Bill Mauro): We'll call the question on NDP motion 15.3. All those in favour? Opposed? That motion is lost.

Government motion 16R, Mr. Oraziotti.

Mr. David Oraziotti: I move that section 21 of the bill be struck out and the following substituted:

"21. Section 9 of the Provincial Parks and Conservation Reserves Act, 2006 is amended by adding the following subsections:

"Restriction in far north

"(6) Despite subsections (1) to (5), the Lieutenant Governor in Council may make an order decreasing the area of a provincial park or conservation reserve that is located in whole or in part in a planning area only if,

"(a) a replacement area of equal or increased size is designated as a protected area in a community based land use plan or the order is conditional on there being a replacement area of equal or increased size designated as a protected area in a community based land use plan;

"(b) the replacement area described in clause (a) contributes to the protection of the areas of cultural value in the Far North and the protection of ecological systems in the Far North; and

"(c) before making the order, the Lieutenant Governor in Council provides notice to the public of a proposed order and provides an opportunity for the public, within the time period that the Lieutenant Governor in Council specifies, to provide written comments on the proposed order.

"Discretion to make order

"(7) Upon complying with subsection (6), the Lieutenant Governor in Council may make an order under that subsection with the changes, if any, from the proposed order mentioned in clause (6)(c) that the Lieutenant Governor in Council considers appropriate.

"Definitions

"(8) In subsection (6),

"community-based land use plan", "Far North, planning area" and "protected area" have the same meaning as in the Far North Act, 2009. ("plan communautaire d'aménagement du territoire", "Grand Nord", "zone d'aménagement", "zone protégée")"

Just to elaborate on the purpose for the amendment and the substitution of this amendment, an important section here with respect to the amendment is around the replacement of an area that is equal to the area that is perhaps being requested to be deregulated or larger than that protected area. This does allow the First Nations communities that, as you've mentioned, do have concerns around existing park boundaries in the north and that may want to develop water power or pursue other economic activities in the area to make that request. The mechanism is being included in the legislation so that we can ensure that this is a partnership and that the First Nations will have the opportunities to, if they see fit, redraw some of those boundaries where it makes sense to do so through their land use planning, provided that the spirit of the legislation in protecting the area that we've talked about—the 225,000 square kilometres and any other protected areas that they see fit—are able to be included.

The Acting Chair (Mr. Bill Mauro): Mr. Ouellette.

Mr. Jerry J. Ouellette: From the way I'm reading this, I think this should effectively resolve a lot of the problems in Peawanuck, in that it specifically states that lands can be exchanged, whereby the all-season road

could then be exchanged for other lands, opening up a lot of the lands in Polar Bear Provincial Park, with additional lands then added in different areas. Is that effectively what we're seeing here?

Mr. David Orazietti: That's correct.

The Acting Chair (Mr. Bill Mauro): Mr. Bisson?

Mr. Gilles Bisson: My question is, does this apply to existing parks in the far north.

Mr. David Orazietti: Yes, it does.

Mr. Gilles Bisson: The other point: Under "discretion to make order," it says, "Upon complying with subsection (6), the Lieutenant Governor in Council may make an order under that subsection with the changes, if any, from the proposed order mentioned in clause (6)(c) that the Lieutenant Governor in Council considers appropriate." That's a pretty wide-sweeping power, I would think. Why is that needed?

Mr. David Orazietti: I think that speaks to your concern and First Nation concerns around the flexibility to be able to accommodate some of the changes that they may want to see going forward. I think if we're really going to have a partnership for community land use planning with First Nations, they need to know that there's a mechanism in the legislation that will respect the decisions that they make in their communities. If that's not there, perhaps the view might be that the intent is not as sincere as it might otherwise be, and I think it's important that that mechanism's there and it's included.

The Acting Chair (Mr. Bill Mauro): Further debate? Seeing none, we'll call the question on government motion 16R. All in favour? Carried.

There are no further motions on that section, so we'll call the question on section 21. Shall section 21, as amended, carry? All in favour? Carried.

There are no motions put forward on sections 22, 23 or 24, so with committee's indulgence, we will call the question on all three sections. Shall sections 22, 23 and 24 carry? All in favour? Carried.

We'll call the question on the title of the bill. Shall the title of the bill carry? Carried.

Shall Bill 191, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you very much, committee members. That concludes our business on Bill 191—

Interjection.

The Acting Chair (Mr. Bill Mauro): Oh, I'm sorry. Yes.

Mr. Kuldip Kular: I move that Mr. Mauro replace Ms. Broten as the government member of the subcommittee on committee business.

Mr. Gilles Bisson: That's a conflict. You can't rule on that.

Interjection.

The Acting Chair (Mr. Bill Mauro): Any debate on that? All in favour? Opposed? Carried.

We are now adjourned.

The committee adjourned at 1643.

CONTENTS

Wednesday 21 October 2009

Far North Act, 2009, Bill 191, <i>Mrs. Cansfield</i> / Loi de 2009 sur le Grand Nord, projet de loi 191, <i>M^{me} Cansfield</i>.....	G-1133
---	---------------

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. Reza Moridi (Richmond Hill L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Gilles Bisson (Timmins–James Bay / Timmins–Baie James ND)

Mr. Randy Hillier (Lanark–Frontenac–Lennox and Addington PC)

Mr. Jerry J. Ouellette (Oshawa PC)

Mr. Lou Rinaldi (Northumberland–Quinte West L)

Also taking part / Autres participants et participantes

Ms. Jessica Ginsburg, legal counsel, Ministry of Natural Resources

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. Michael Wood, legislative counsel

G-46



G-46

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Official Report of Debates (Hansard)

Monday 2 November 2009

Standing Committee on General Government

Environmental Protection
Amendment Act (Greenhouse
Gas Emissions Trading), 2009

Chair: David Oraziotti
Clerk: Trevor Day

Assemblée législative de l'Ontario

Première session, 39^e législature

Journal des débats (Hansard)

Lundi 2 novembre 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant la Loi sur
la protection de l'environnement
(échange de droits d'émission
de gaz à effet de serre)

Président : David Oraziotti
Greffier : Trevor Day



Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 2 November 2009

Lundi 2 novembre 2009

The committee met at 1403 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. David Oraziotti): Good afternoon, everyone, and welcome to the Standing Committee on General Government. We're here to discuss Bill 185 today. Before we do that, we have a subcommittee report. Can I get a member to read that report for us? Mr. Mauro, thank you.

Mr. Bill Mauro: Your subcommittee met on Friday, October 23, 2009, to consider the method of proceeding on Bill 185, An Act to amend the Environmental Protection Act with respect to greenhouse gas emissions trading and other economic and financial instruments and market-based approaches, and recommends the following:

(1) That the committee meet in Toronto on Monday, November 2, 2009, and Wednesday, November 4, 2009, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings in the Ontario edition of the Globe and Mail and L'Express for one day during the week of October 26, 2009.

(3) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and Canada NewsWire.

(4) That the committee invite Hugh MacLeod, the associate deputy minister to the Premier, Climate Change Secretariat, and Marcel Coutu, president and CEO of the Canadian Oil Sands Trust, to make a presentation of up to 10 minutes, followed by five minutes of questions from the committee.

(5) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Friday, October 30, 2009.

(6) That groups and individuals be offered 10 minutes for their presentation, this time to be scheduled in 15-minute increments to allow for questions from the committee.

(7) That witnesses be scheduled on a first-come, first-served basis for the Monday, November 2, 2009, hearing date.

(8) That in the event all remaining witnesses cannot be scheduled for the Wednesday, November 4, 2009, hearing date, the committee clerk provide the members of the subcommittee with a list of requests to appear.

(9) That the members of the subcommittee prioritize and return the list of requests to appear by 12 noon on Monday, November 2, 2009, and that the committee clerk schedule witnesses based on those prioritized lists.

(10) That the deadline for written submissions be 5 p.m. on Wednesday, November 4, 2009.

(11) That the research officer provide the committee with a summary of presentations by November 12, 2009.

(12) That, for administrative purposes, proposed amendments be filed with the committee clerk by 12 noon on Thursday, November 12, 2009.

(13) That the committee meet for the purpose of clause-by-clause consideration of the bill on Wednesday, November 18, 2009.

(14) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

The Chair (Mr. David Oraziotti): Thank you, Mr. Mauro. Any questions or comments on the subcommittee report? Seeing none, all those in favour? Opposed? That's carried.

ENVIRONMENTAL PROTECTION
AMENDMENT ACT (GREENHOUSE GAS
EMISSIONS TRADING), 2009LOI DE 2009 MODIFIANT LA LOI SUR
LA PROTECTION DE L'ENVIRONNEMENT
(ÉCHANGE DE DROITS D'ÉMISSION
DE GAZ À EFFET DE SERRE)

Consideration of Bill 185, An Act to amend the Environmental Protection Act with respect to greenhouse gas emissions trading and other economic and financial instruments and market-based approaches / Projet de loi 185, Loi modifiant la Loi sur la protection de l'environnement en ce qui concerne l'échange de droits d'émission de gaz à effet de serre ainsi que d'autres instruments économiques et financiers et approches axées sur le marché.

ENERGY PROBE

The Chair (Mr. David Oraziotti): We'll move right to presentations. The first presentation is Energy Probe.

Lawrence Solomon, if you'd like to come forward. Good afternoon, sir. You have 10 minutes for your presentation and five minutes for questions from committee members. When you start, just state your name for our recording purposes, and you can begin.

Mr. Lawrence Solomon: Lawrence Solomon with Energy Probe.

Thank you, Mr. Chairman and members of this committee, for the opportunity to provide Energy Probe's view on Bill 185. I would first like to introduce my organization. We are one of Ontario's oldest and largest environmental organizations, established at the University of Toronto in 1970 and entirely non-partisan. Many of the important reforms that we have seen in Ontario's power sector over the decades have originated with us. The breakup of Ontario Hydro's monopoly, for example, directly followed our recommendations. Initially, these recommendations were endorsed by Bob Rae of the Ontario NDP and David Peterson of the Ontario Liberals. Our recommendations then became part of Mike Harris's Common Sense Revolution, and when the Tories came to power, Hydro was indeed broken up.

Ontarians spend more time with Energy Probe than with any other environmental organization in Canada. According to Amazon's Alexa metrics, Energy Probe's website is Canada's most popular environmental website. People spend more time with us than on the sites of the David Suzuki Foundation, for example, or the World Wildlife Fund combined. We also reach large numbers of Ontarians through our op-eds in major papers and my weekly columns in the *National Post*. Last year, my book on scientists who are skeptical of global warming—the book is called *The Deniers*—was the number one environmental bestseller in both Canada and the United States.

I am here this afternoon to tell you that the government's proposed greenhouse gas trading scheme would be a mistake, one that would harm the environment as well as the economy. The premise behind Bill 185 is that a North American cap-and-trade plan could be in place as early as 2012. This was an unlikely expectation in May, when the government proposed the legislation, and it is even more unlikely today. The US public has turned decisively against the global warming scare. A majority of Americans, even a majority of Democrats in the US, no longer believe Al Gore. Most Americans believe global warming is a natural phenomenon, not man-made. Likewise, the public in the UK no longer believes that global warming is a serious concern—and the public in Australia and the public in Canada. A new Climate Confidence Monitor survey released just this morning shows that support for action on climate change is plummeting in Canada. Just 26% of Canadians consider global warming among their chief concerns; that's down from 34% last year.

Because the public around the world is no longer buying the hype over global warming, the meetings in Copenhagen next month will accomplish nothing of substance. And because Copenhagen will amount to

nothing, the White House has already indicated that Barack Obama will not be attending, so as not to be tainted by Copenhagen's failure. The *Washington Post* yesterday said of the Senate climate change bill, "There is almost no hope for passage."

1410

On the global warming issue, the public once again has been well ahead of the politicians. Some of you around this table may be surprised by the polling data and how quickly the politics can change. Some of you may think the science is settled on climate change. Let me tell you why you think the science has settled. It all comes down to one number: 2,500. That's the number of scientists associated with the UN's Intergovernmental Panel on Climate Change, the number that the press reports over and over again. If you do a Google search on news articles that claim that the science has settled on climate change, you'll see that reporters almost always rely on this number; "2,500 scientists can't be wrong," they always say, explicitly or implicitly. If they didn't have that number, they would have no basis for the claim that they repeat over and over again, the claim that there's a consensus on climate change.

Twenty-five hundred is an impressive number. I wondered: Who exactly were these 2,500 scientists associated with the UN? To find out, I contacted the secretariat of the United Nations Intergovernmental Panel on Climate Change and asked for their names. I intended to survey them and find out exactly what those 2,500 thought. The answer that came back from the secretariat was negative. I learned that the names were not public, so I couldn't have them, and I also learned that the 2,500 scientists were reviewers, not endorsers. That group of scientists hadn't endorsed anything. They were merely people who had reviewed some of the inputs that went into the bureaucratic maw at the United Nations. They did not review the final report; they did not endorse it. Their reviews weren't even all favourable. I know that from many sources, including from among some of the scientists that I profiled. Several of the deniers in my book are among those 2,500. Those deniers and others generally consider the UN's work a travesty.

So there is no endorsement by 2,500 top scientists. The press has been taken, and so, until recently, a majority of the public has been taken as well. The extent to which the public has been taken may surprise you.

Not only is there no consensus; the scientists who are skeptics, the so-called deniers, have extraordinary credentials. They are the who's who of science. They include Antonino Zichichi, the president of the World Federation of Scientists and the discoverer of nuclear anti-matter. He is Italy's best-known scientist. They include Claude Allègre, who is France's best-known scientist. They include one of Germany's best-known scientists, and Britain's and America's, Freeman Dyson, the physicist, the inventor of the TRIGA, the nuclear reactor used in hospitals and university labs around the world to create isotopes. They include Syun Akasofu of the International Arctic Research Center, the discoverer

of the causes of the storms of the aurora borealis. They may, in fact, include the majority of the world's top scientists.

The majority of scientists not only believes that CO₂ does not cause harm; most—a great majority—believe it to be a gas that benefits the global environment. Thanks to CO₂, which is also known as nature's fertilizer, the planet now is greener than it has been in decades, since satellite measurements began recording the amount of biota on earth.

In closing, let me tell you something else about my organization. Energy Probe has a large Third World wing called Probe International, which works at the grassroots level in the Third World. The citizens' groups in the Third World that we work with are up in arms over attempts by western governments to comply with Kyoto.

Kyoto, in fact, has emerged as the single greatest destroyer of the global environment, precisely because of mechanisms such as cap and trade that attempt to commodify carbon. What we purchase with a carbon credit or a carbon offset is often the environment of a community in the Third World—its river valley, its old-growth forest, its farmland. Kyoto has made us the enemy among many in the Third World.

I'll stop my prepared comments at this point. I've distributed some information that elaborates on some of my remarks, and now I'll be happy to take any questions that you might have.

The Chair (Mr. David Oraziotti): Okay, thank you. Mr. Barrett, go ahead. You're the first up.

Mr. Toby Barrett: Thank you, Mr. Solomon, on behalf of Energy Probe. You use the term "denier." It's not your word, but it's a word that is used for those who come up with the other side of the story. I think it's regrettable that that word is being used. Many years ago, I visited Dachau, and we know that the term "denier" is also used in the context of the Holocaust. This is obviously not a scientific approach, but there is almost some kind of a public relations approach, if you will, to demonize one side of the fence and not the other. What's your thought on that?

Mr. Lawrence Solomon: That's exactly the case. There has been a very active, conscious attempt to marginalize any dissenter. If someone dissents, they find that they are ostracized and they lose their funding. In some cases, they've lost their jobs. Even if they're willing to suffer that opprobrium, they will find that their colleagues, for example, in their university departments will fear them carrying on with their statements because they fear that the entire university department might lose its funding. So the term "deniers" is used just as you said: It's consciously used. People who have raised it have directly identified climate change deniers with Holocaust deniers, saying that the actions in denying the possible consequences of climate change could lead to another holocaust.

Mr. Toby Barrett: You mention the difficulty in, say, through university funding, in getting research funding to look at the other side. Is there not, throughout the world,

some neutral, objective research organizations that are above this, that would look at both sides of the picture?

Mr. Lawrence Solomon: Yes. There are some marvellous research organizations. One of them is in Denmark, the Danish national space agency. It has come up with very powerful evidence of a relationship between solar activity and global warming on earth.

Another is CERN, which is perhaps the largest research organization in the world, based in Geneva. CERN is best-known for that \$2.4-billion collider that it's building. But CERN is—

Mr. Toby Barrett: What organization is that?

Mr. Lawrence Solomon: It's called CERN. It's the centre for research into—I forget what the acronym stands for; it's a French term. I think it's the centre for research into nuclear energy.

Another major organization is Pulkovo—astronomy. They're Russian. They run the Russian half of the international space station. The international space station is shared by the US and Russia. The scientist in charge of the Russian half, Habibullo Abdussamatov, has been producing research for quite a long time showing that climate change is entirely a natural phenomenon. He thinks he has some—

The Chair (Mr. David Oraziotti): I'm going to have to stop you there. That's the time for questions from the Conservative caucus. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I don't think this person has anything useful to say to this committee. I have no questions or comments. I'll leave it to the other party.

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: I just want to clarify: You do not, therefore, agree with the Intergovernmental Panel on Climate Change's fourth assessment report, released in 2007, that states that the evidence of climate change is unequivocal?

420

Mr. Lawrence Solomon: It is patently clear that it is not unequivocal when there are so many fine scientists around the world, so many major research organizations around the world, who dispute its findings.

Ms. Helena Jaczek: And you similarly, therefore, do not agree with the Climate Change Science Compendium released in 2009 by the United Nations Environmental Programme that stated that, in fact, they are even more confident today in their forecasts regarding climate change?

Mr. Lawrence Solomon: That's right. All of the research comes down to the validity of computer models; all we have are projections of computer models saying, "Here is the damage that is going to occur in the future." Those computer models have not yet been demonstrated to work. Not only can they not project into the future, they can't even be made to project into the past. The climate is so complicated, there are so many variables, that no one has been able to get a climate change model that can backcast, let alone forecast. For that reason, the projections are extremely suspect, and for that reason, the

majority, I believe, of the top scientists of the world dispute those models.

Ms. Helena Jaczek: If I could just follow up, you stated at the outset that Energy Probe was established at the University of Toronto. Do you have any current affiliation with a major academic institution?

Mr. Lawrence Solomon: No, we do not.

The Chair (Mr. David Oraziotti): I think that's all the time that we have for questions. Thank you very much for your presentation today.

CLIMATE CHANGE SECRETARIAT

The Chair (Mr. David Oraziotti): The next presenter is the Climate Change Secretariat: Mr. Hugh MacLeod. Would you come forward, please? Thank you, Mr. MacLeod. As you know, the committee invited you to be here today, so we appreciate you taking the time to be here. State your name for the purposes of Hansard, and you can begin your presentation.

Mr. Hugh MacLeod: My name is Hugh MacLeod, and I want to thank you for the opportunity to be here today. My presentation will set the backdrop for Bill 185 in that I will cover two aspects: a brief overview of Ontario's response to reducing greenhouse gas emissions and a high-level update of government progress on its climate change action plan.

In 2007, the government introduced Ontario's climate change action plan as the framework for action to reduce greenhouse gas emissions. The action plan established the following GHG reduction targets: 6% below 1990 levels by 2014—the 1990 baseline is in keeping with the UN Framework Convention on Climate Change; 15% below 1990 levels by 2020; and 80% below 1990 levels by 2050. These GHG reduction targets signal Ontario's strong commitment to taking real, measurable action to reduce GHG emissions.

To coordinate efforts, the Climate Change Secretariat was created within Cabinet Office in February 2008. The secretariat's mandate is to provide corporate leadership and support for government-wide efforts on all aspects of climate change. One of the secretariat's primary roles and value-adds is risk management and results-based outcome reporting.

In reviewing the 2007-08 climate change action plan report, the Environmental Commissioner made this comment: "The issue of tracking is fundamental to making course corrections and re-evaluating the design and performance assumptions around initiatives that are expected to achieve the greenhouse gas reduction emissions."

To address this crucial step, Ontario tracks the performance of all climate change action initiatives using a common template. Like the dashboard of a car, these templates represent important information related to climate change initiatives, progress and status. Using a consistent mechanism for tracking and risk management allows the Climate Change Secretariat to do three things: (1) keep the plan and the targets on track; (2) recommend course corrections when needed; and (3) take the lead

role for the development of the annual climate change action plan report. By tracking, analyzing and reporting on results on the government's progress to reduce GHG emissions, the Climate Change Secretariat is positioned to facilitate cabinet decision-making in regard to implementation of climate change-related policies and programs.

Currently, to give you a scope, the government, through the Climate Change Secretariat, tracks results and completes modelling forecasts on six portfolios involving over 70 climate change initiatives that cut across 11 ministries and two agencies.

Ontario's approach to modelling GHG from year to year will need to constantly be adjusted to incorporate changing best practices and other refinements based on lessons learned and the latest data available. Translating the information gathered from 70 initiatives across 11 ministries and two agencies requires careful work.

As you can appreciate, many variables and assumptions go into creating a forecast. For example, on the surface, the emissions from passenger vehicles are quite simple to calculate: how far you drive—vehicle kilometres travelled—times how fuel-efficient your vehicle is times the greenhouse gas intensity of that fuel. However, when we drill down further, we find that the impacts of investment in public transit depend on who is getting out of their cars, how far they drive, the cars they drive and the kind of fleets we have, how often they replace their cars with newer ones, and the trends in fuel efficiency as we move forward.

The impact also depends on other policy and program decisions related to mobility: the planning of our cities and greenbelts, the availability of our HOV lanes, and the cost and convenience of alternatives.

Understanding the province's capacity to further reduce greenhouse gases requires us to understand where we are today and what the progress trends would be under a business-as-usual scenario. In other words, where would we be if the province had decided to do nothing?

In addition, achieving the project emission reductions requires successful, ongoing mitigation and contingency for risk. Potential contingencies and risks are tracked and regularly reported to the ministry so as to, in turn, label them to make the mitigation changes.

None of the rules of the Climate Change Secretariat that I have mentioned include the words "delivery for policy." As mentioned earlier, the role of the Climate Change Secretariat is to facilitate cabinet decision-making with regard to policy. The development of the greenhouse gas emission trading that would be enabled if Bill 185 is passed will be driven by the Ministry of the Environment in partnership with other ministries and supported by the Climate Change Secretariat. Work to date on GHG emission trading, including discussion papers released in December 2008 and May 2009, has been led by the Ministry of the Environment. A key focus of our work with the Ministry of the Environment on cap-and-trade is understanding through modelling and forecasting the potential impact of GHG trade—offsets,

auctioning etc.—on our greenhouse gas reduction strategy.

If passed, Bill 185 would enable Ontario to link to North American trading. The year ahead will be critical in the development of a cap-and-trade system for GHG reductions, including complementary initiatives that will no doubt be included, things like new GHG reporting requirements that will ensure the design and implementation of a fair and effective cap-and-trade system; development of regulations to ensure that Ontario reaches its GHG reduction target; and measures that can stimulate the development of carbon offsets and compliance. Cap and trade is the next big step towards our low-carbon future. Using a baseball analogy, given that this is the season, it can become the game changer.

On progress: Without going into specific details and numbers today, I can say that the soon-to-be-released 2008-09 climate change action report to the Legislature will show that Ontario is making progress towards 2014 and 2020 targets.

Here's a sample of portfolios and climate change initiatives that will be highlighted in this year's annual report.

OPS green strategy for GHG reductions: The report will talk about what the Ontario public service is doing to reduce GHG emissions in buildings, vehicles, air travel, paper, print services, electronic devices and e-waste.

On the theme of green energy, conservation and efficiency, the report will talk about actions including the phasing out of coal, the Green Energy Act, the smart electricity grid, smart electricity pricing, and harnessing the power of conservation, water, wind, solar and bio-energy.

Did you know that GHGs from transportation accounted for 31% of Ontario's 2007 total emissions? The report will talk about actions on GO Transit, the Smart Commute program, public transit, networking HOV lanes on major highways, and electric car and commercial fleet strategy.

On land use and stewardship: 12.5 million tonnes of carbon dioxide are absorbed from the atmosphere every year by the far north boreal region's trees, soil and peat resources. The report will talk about actions in the boreal forest region, tree planting activities and the community go green fund. On the numbers, this year's report will provide a status update on GHG emission numbers rolled up from the 70 initiatives across 11 ministries and two agencies. You will see where the investment is bringing us today, towards our 2014 and 2020 target.

1430

To provide the public, the Ontario Legislature and the Environmental Commissioner's office with confidence in the province's long-term forecasts, the government had its emissions reduction modelling methods and assumptions validated by an independent third party. The process of completing the validation is intended to help provide confidence that we are modelling and we are forecasting our assumptions in the right and proper way.

Ontario is the first jurisdiction to undertake a validation of its forward-looking emission reduction forecasts.

The Environmental Commissioner noted the notion of continuous improvement in last year's report, and this is what he said: "The reality... is that the progression in achieving the cumulative reductions out to 2014 (and beyond) will most likely represent a shape more akin to a 'hockey stick' ... incremental savings in the earlier years ... ramping-up as programs evolve, tracking improves, expertise accumulates and market transformation progresses."

The review of the annual report by the Environmental Commissioner is a very important step and demands that government must continue to bring rigour to our evolving tracking and reporting processes. Looking ahead, you will see continuous improvement in public reporting for the 2010 and subsequent annual reports. Each annual report will show how Ontario is doing, the lessons we are learning and the next steps we will take to stay on track.

If, as the old Haida saying has it, we do not inherit the earth from our parents, we borrow it from our children, then we collectively have an opportunity to demonstrate to our children and our grandchildren that we honour this through a sustainable, results-based climate change action plan.

In summary, (1) Ontario is committed to doing its part to cut greenhouse gas emissions causing climate change; (2) Ontario set tough GHG targets in 2007; (3) Ontario's climate change action plan, made up of six broad portfolios comprising 70 initiatives that span 11 ministries and two agencies, is our framework for action; and (4) as you will see in the 2008-09 annual report, we are making progress, but we still have a lot of ground to cover to meet aggressive greenhouse gas reduction targets. Cap-and-trade is the next best and the next big step.

In the time remaining, I am pleased to take questions about the work of the climate change secretariat. There are MOE representatives in the room who can answer questions with regard to cap-and-trade and related policy development.

The Chair (Mr. David Oraziotti): Thank you. We have a few minutes for questions. Mr. Tabuns, you're up first.

Mr. Peter Tabuns: Mr. MacLeod, thank you for coming and presenting today. This cap-and-trade bill: How many megatonnes of greenhouse gases is it targeted to reduce in the years 2014 to 2020?

Mr. Hugh MacLeod: I can't give you the precise number today. What I can tell you is that we've had an ongoing conversation with the Ministry of the Environment on looking at what is potential. The reason why I can't tell you today is because it continues to change based on what is happening on the North American scale. Once we get a clear understanding of what the American trade system will look like and its elements, we will be in a better position to give an absolute in terms of the greenhouse gas reductions that are possible. But we do have a range of what is possible.

Mr. Peter Tabuns: Can you give us the range of what is possible?

Mr. Hugh MacLeod: The range of the possible would be enough, depending on the size of the cap and what the price is, to actually help us close to our 2014 and 2020 target.

Mr. Peter Tabuns: And what are those numbers? What is the range?

Mr. Hugh MacLeod: I don't have the numbers here today, but I can get them.

Mr. Peter Tabuns: What percentage of the reduction in greenhouse gas emissions will come from offsets and what will come from reduction in the burning of fossil fuels?

Mr. Hugh MacLeod: That calculation is ongoing because the offset side, as you are well aware, is the side that is basically not part of the regulatory regime. For example, these would be farmers being encouraged to do something different with agriculture or the forest industry doing something important in terms of their land use. Part of it will depend on how far those environments move to provide a base for offsets. It's difficult to give a precise number, but in the modelling, we will be looking at ranges of possibility to find that portion from the offset and the portion from cap and trade.

Mr. Peter Tabuns: Can you tell us when we will actually have numbers?

Interjection.

The Chair (Mr. David Orazietti): Have a seat. If you have something to add to the discussion, just quickly—

Mr. Jim Whitestone: Jim Whitestone, Ministry of the Environment.

The Chair (Mr. David Orazietti): If you could answer this as briefly as possible; we need to move on. Go ahead.

Mr. Jim Whitestone: The ministry has continued to follow development of the US cap-and-trade system, working with the Western Climate Initiative to implement a cap-and-trade system by 2012. As the design of the US system gets filings over the course of the next year, hopefully we'll have a better answer for you at that time.

Mr. Peter Tabuns: So a year from now.

The Chair (Mr. David Orazietti): That's it, Mr. Tabuns. Thank you. Ms. Jaczek, go ahead.

Ms. Helena Jaczek: Thank you very much, Dr. MacLeod, for really giving us a good overview of the complexity of the issue and the range of actions that are being taken. I just wanted to say that in a nutshell, in other words, you are convinced that Bill 185 is a necessary and important step that this government can take?

Mr. Hugh Macleod: Absolutely.

Ms. Helena Jaczek: Thank you.

The Chair (Mr. David Orazietti): Thank you. Mr. Yakabuski, go ahead.

Mr. John Yakabuski: Thank you very much for joining us this afternoon. I'm going to ask you a couple of questions on—you were here for the previous presenter, Mr. Solomon. It's the first time I heard about it; I'm not a scientist. The fact that the publication of the scientists

who are part of the global warming theories—we're not able to get at those names. He named a number of scientists. I don't know them—that's not my business—but I suspect you would know. I know we're paying you a lot of money to go through this process here. Can you comment on the scientists who were named? He also gave the work that they're involved in. Do you question their credentials? Do you say they're not credible or they are credible? What would your comment be on the credibility of those particular scientists?

Mr. Hugh Macleod: First of all, I'm going to set a context to respond to your question. Every jurisdiction in the world is paying attention to climate change. Every jurisdiction in the world has some form of target, and, with targets, some form of measurement. Therefore, I have to assume on a world order that the debate is now over with regard to whether or not we have a challenge—

Mr. John Yakabuski: I'd like you to comment on what he said. Name those scientists. That's the question I asked.

Mr. Hugh MacLeod: I'm not familiar with the work of any of the scientists he has named. What I am familiar with are the leading practices around the world with respect to the importance of climate change and the initiatives that are currently taking place around the world—

Mr. John Yakabuski: So you're not familiar with the scientists he named?

Mr. Hugh MacLeod: I'm not familiar with their work; no, I'm not.

Mr. John Yakabuski: Okay. Thank you.

Mr. Toby Barrett: Chair?

The Chair (Mr. David Orazietti): Mr. Barrett, go ahead.

Mr. Toby Barrett: A quick question about the TD Bank-funded report. This is just from the Globe and Mail; I don't have the report. Environmentalists make assumptions that a large part of meeting the goal is through carbon capture and storage. Are we working on that in the province of Ontario?

Mr. Hugh MacLeod: At this point in time, we are not.

Mr. Toby Barrett: Okay. Thank you.

The Chair (Mr. David Orazietti): Thank you, Mr. MacLeod. There are no further questions from the committee.

CEMENT ASSOCIATION OF CANADA

The Chair (Mr. David Orazietti): Our next presentation is the Cement Association of Canada. Good afternoon, gentlemen. Welcome to the Standing Committee on General Government. You have 10 minutes for your presentation and five for questions from committee members. Whoever may be speaking, please state your name for recording purposes, and you can begin when you're ready.

Mr. Gerald Kennedy: Gerald Kennedy, senior manager, environmental affairs, Cement Association of Canada.

1440

Mr. Luc Robitaille: And I'm Luc Robitaille, corporate director of environment for Holcim Canada, and I'm also the chair of the national environmental committee for the cement association.

I want to thank you for inviting us here to discuss Bill 185 with you. The Cement Association has been involved for a long time with the MOE, the federal government and the WCI. We're also involved through the Asia-Pacific Partnership and many other groups, trying to deal with this very important issue for our sector. We believe that global climate change can only be addressed through policies that avoid production and emission leakage and can sustain a strong and cohesive Ontario economy.

The first thing I'm going to talk about is the distinction between what is cement and what is concrete, which is not something that is understood by everybody. Cement is a dry, fine powder. It's produced in very large facilities that use a lot of energy. It's shipped worldwide. There is a little bit of an import market in the Great Lakes at this point but, in general, Ontario has been an exporter of cement. On the other hand, concrete is the product we are more familiar with. It's produced locally. It's a perishable good. Once you add water to concrete, you have to place it within two hours; otherwise, the batch is not usable. That's normally why concrete plants are located near to the major markets.

Concrete is a very durable and sustainable material. Through the use of concrete, you can save in energy for building; you can save approximately 2% to 5% of fuel for heavy trucks on highways that are built out of concrete. Although we are a source of GHG once we produce cement, the use of the product itself, through concrete, brings major savings in greenhouse gas in the economy.

If you want to go to the next slide, some of the beneficial properties, besides being GHG-friendly, if you will, are that it's durable and versatile. The problem with concrete is that it is so omnipresent in our society, we don't see it and we don't think about it. It's in our roads, it's in our buildings, it's in our subways, it's in our electricity-producing stations, whether it be nuclear, whether it be coal-fired, whether it be hydro power. It is everywhere, so we tend to take it for granted.

As far as production, right now approximately half of the worldwide production comes from China. Canada is a minor player in here. We produce about four million tonnes in Canada. Out of that, approximately half is produced in Ontario. Canada as a whole is a price-taker on the world market. There have been very few new plants built since the 1990s in Canada. Most of the growth has taken place in Asia and the rest of the developing world. We obviously would like the industry to continue growing in Canada, but we will need to work with all governments to have the right levers and the right programs in place so that we continue investing in Ontario and in Canada.

How does greenhouse gas come into play in the cement sector? To produce cement, you take limestone, shale and other natural raw materials. You heat them at temperatures that are above 1,500 degrees Celsius; it's about a third of

the temperature of the sun. In producing this material, you're going to have two types of emissions. If you look at the graph on page 6, you will see that about 60% of the emissions come from the chemical reaction of producing cement. So it's an irreducible portion of the CO₂ generation, if you will. It comes from taking limestone and making it into CaO, which is part of the manufacturing of cement. The rest, the 40%, the fraction that we're working at reducing, comes from the use of the fuels.

For the most part, if you look at the other slide, you'll see that—I skipped one page here. On slide 8 you'll see that most of the fuels that are used in the cement sector right now are either coal or pet coke. So they are fossil fuels. It is not what's happening throughout the world. A significant fraction of the fuels used worldwide come from alternative raw materials and alternative raw fuels, which are in many cases biomass. For each tonne of biomass fuel you would use—for example, wood—you reduce the CO₂ emissions by about 2.5 tonnes. So one tonne of wood will reduce our CO₂ emissions by 2.5 tonnes, so it's a significant reduction that we can have.

The cement sector, if you go back to slide 7—I'm sorry, I skipped one—has been working on this issue for a long time. There are four main levers that have been identified through a worldwide consultation that was done through the WBCSD. The four levers for reducing our emissions include, obviously, energy efficiency, which is going from older-generation kilns to newer-generation kilns. This will still bring you a very limited amount of reductions. To give you an example, our company has closed one plant in Newfoundland, one plant in Quebec and two kilns in Ontario. On average, that gave us a savings of about 7% on the energy side. It is a significant lever, but not the main lever.

The most important lever at this point is to produce less clinker-intensive cement. It's to use waste material from other industries as replacement for clinker so that we can have a less CO₂-intensive product in the end.

The third lever is to use, as I mentioned earlier, alternative fuels that have a lower GHG component to them.

Finally, we do a lot of research on materials and applications of our product in the field so that we can also find savings in the marketplace.

The key principles that are guiding Ontario in developing Bill 185: We embrace these key principles, which are:

—We need to protect the competitiveness of local industry. As I mentioned to you, we are a small producer worldwide and we're a price-taker. It's important to take into consideration the limitations of the producers in this market. We need to avoid leakage of emissions that will force production outside of Ontario without bringing any benefit to the environment or to the economy here;

—We definitely need to take into consideration the 60% of the process emissions that come from the transformation of limestone into cement;

—We believe that Ontario needs to align with its trading partners, which are the other Canadian provinces,

but also the US. As I mentioned, approximately 40% to 50% of Canadian production goes to the US, so it's important that we align our policies with theirs; and

—We need to avoid multiple price signals on greenhouse gas emissions. Having a provincial program, having a WCI program and having a federal program brings different signals to the same emissions and it's hard for industry to determine how to invest in those circumstances.

We're also in agreement with the WCI competitiveness assessments that were done through the consultation process, which also looked at leakage and transitional measures so that we can achieve the reductions that we've promised.

Also, we are considering that the harmonization of regulations within all the WCI partners is very important for our sector and other sectors as well.

The most important slide is on page 11. The cement sector has done a worldwide benchmarking exercise. For each one of the levers that I talked to you about earlier, we were able to add the data from producers in Europe, Canada, the US and the rest of the world and determine exactly what is achievable for each one of these levers and what the cement sector can deliver in Ontario, based on the fleet of plants that is here, and arrive at achievable targets for the cement sector in Ontario. I think that it's very important that the MOE consider, in developing the targets for our sector, what has been done in benchmarking worldwide.

As I mentioned, the cement sector is CO₂-intensive. We produce about 3% of the GHG emissions in Ontario and 12% of the industrial sector's. As I said, using our product brings some benefits for society on the GHG side.

In our other partner jurisdictions, the cement sector has been considered as trade-exposed GHG-intensive. We hope that we will have the same type of treatment under the Ontario program so that we are able to survive during the transition period, before the rest of the world embraces the same types of regulations.

1450

Considering all the aspects that I've talked about where energy-intensive is a commodity, we're exposed to trade with 40% of our product going to US. It's important that these transition measures be put into place. Where we need Ontario's help is with facilitating the investments that we want to make in energy efficiency, supporting programs that bring fossil fuel replacement with less GHG-intensive fuels—for the most part, alternative fuels which are waste products from other sectors—and also fast-tracking the move to building codes that take into account the lower intensity cement that we produce using these substitution products. Taking a life-cycle approach in the decisions on investment in infrastructure in Ontario is also an important part.

The Chair (Mr. David Orazietti): Thank you very much, Mr. Robitaille. That's the time for your presentation. You'll have an opportunity to clarify some of those things in questions. We'll start with Ms. Jaczek.

Ms. Helena Jaczek: I'd like to thank the Cement Association of Canada, first of all, for being really involved. I understand that you have been engaged with the Ministry of the Environment in this dialogue. You seem to have a great deal of experience in terms almost of the global cement industry.

I was wondering if you could relate any experiences from the European emissions trading system. Have there been some useful lessons learned that you could perhaps share that you may know of?

Mr. Luc Robitaille: Yes, well, I've been involved in dialogue with our partners in Europe. We've invited people from Europe to the consultations we've had here in Ontario and to the consultations we had in Quebec also, and to the consultations we've had with WCI, to share their experience out there both on how they've designed their system and also how they've done their benchmarking.

In phase one and phase two, the reductions that were required from the sector were quite minimal. The more aggressive reductions will take place in phase three, and that's what's behind the effort they made on benchmarking, to see what is achievable and what is not achievable.

The key lesson from our sector is to look at the suite of data that they gathered to be able to determine, as I said, lever by lever, what will be achievable here considering where our plans sit versus this worldwide benchmarking effort.

Ms. Helena Jaczek: Thank you.

The Chair (Mr. David Orazietti): Mr. Mauro, go ahead.

Mr. Bill Mauro: Thank you, Mr. Robitaille. You used the term "emissions leakage." Are you referring to a situation where, through the trading, you could see production move to a different jurisdiction? Is that what you're talking about?

Mr. Luc Robitaille: That's right.

Mr. Bill Mauro: Okay. Can you elaborate on that a little bit for us, please?

Mr. Luc Robitaille: At this point, there's no program in place in Ontario. The only evidence that we would have on a Canadian-based system would be the imposition of the carbon tax that was brought in in BC shortly after the introduction of this carbon tax. Obviously, it coincides a little bit with the downturn in the economy, but there was an immediate shift towards imports in their local market out there and a major reduction also in exports, because they were exporting a significant part of their production to the west coast of the US. That is the only evidence we have in Canada now.

In Europe, as I said, there has been little reduction required in the first phase, but what we see is that there's been almost no new investment in our sector in Europe since they brought in their system. Most of the investments are taking place in Asia. Is it a question of demand only, or is it a question also of the imposition of these systems? It's hard to tell, but that's what we see. We see what happened in BC, where immediately there was a

shift, and in Europe there's almost no new investment that's taking place. That's the evidence that we have now of the leakage concerns.

The Chair (Mr. David Oraziotti): Mr. Barrett, go ahead.

Mr. Toby Barrett: A quick question. You mentioned that half the world's cement is produced in China, and this province has signed an agreement with Utah and Arizona and some of those jurisdictions, but not China. Would it be feasible, if China was to continue without any climate change type regulation, to ship cement to North America?

Mr. Luc Robitaille: It's starting already. We receive in the port of Quebec already cement that comes from Asia. It's very, very easy to ship cement from Asia through the Panama Canal to the market out here. The costs are comparable to shipping cement—the round numbers that we use normally are that it's about the same cost to bring cement in from China to Quebec as it is to put cement on a truck from Quebec to a little bit further than Montreal. So the costs are very—

Mr. Toby Barrett: Okay. Thank you.

The Chair (Mr. David Oraziotti): Mr. Yakabuski.

Mr. John Yakabuski: You talked about alternative fuels, and I know that you guys have been dealing with this issue for some time. If the government was really serious about reducing greenhouse gas emissions—I know you guys have had the alternative fuels issue on the table for some time. Cement is a very greenhouse-gas-intensive business because of the fuels that you require to produce your product, and the government has really not been able to make any progress on that, have they? Other jurisdictions allow it, and we're still toying around with this. We're paying a climate change guy hundreds of thousands of dollars a year and all this kind of stuff, and nothing's happening. What seems to be the problem?

Mr. Luc Robitaille: Well, Ontario is a little bit behind other places. In Quebec, we have a substitution rate where about 25% to 30% of the traditional fossil fuels are being replaced by waste material. If you're replacing it with biomass, as I said, it's about 2.5 tonnes of CO₂ per tonne of that product that is saved. If you go to other types of products, like plastics or whatever, it's probably more like 0.7 or 0.5 tonnes of CO₂ per tonne of that product. So there are major gains that can be made on the alternative fuel side.

Mr. John Yakabuski: So what's the problem with the government?

Mr. Luc Robitaille: We're working with the government, and I would say that we're starting to see some interesting movement, especially thanks to the greenhouse gas file, where the government really recognizes that there is benefit in using it.

The Chair (Mr. David Oraziotti): Thank you, Mr. Robitaille. That's time.

Mr. John Yakabuski: Do you imagine we'll hear something this year—

The Chair (Mr. David Oraziotti): Thanks, Mr. Yakabuski. Mr. Tabuns, you're up.

Mr. Peter Tabuns: Mr. Robitaille, Mr. Kennedy, thank you for coming and making your presentation. When you talk about other jurisdictions—the California Air Resources Board, Australia's Carbon Pollution Reduction Scheme bill—can you tell me what they're doing in those jurisdictions in relationship to cement?

Mr. Luc Robitaille: They have developed a formula, if you will, to determine which sectors are trade-exposed and carbon-intensive. In those jurisdictions, cement was placed in that category, if you will, and that will allow the sector to have transitional measures, either free credits or whatever. The treatment varies depending on the type of program, but the thing is that they recognize the risk of leakage and of the local producer in this market due to the pressure of the carbon system, so it's really giving the right treatment for cement due to this exposure.

Mr. Peter Tabuns: Okay. Thank you. I appreciate that.

The Chair (Mr. David Oraziotti): Thank you for your presentation today. That's all the time we have.

SUNCOR ENERGY

The Chair (Mr. David Oraziotti): The next presentation is Suncor Energy. Good afternoon, gentlemen. Welcome to the Standing Committee on General Government. You were watching the presentations, so you know that you have 10 minutes for your time and five for questions. If you could state your names, and you can get started.

Mr. Mike Cassaday: Thank you. My name is Mike Cassaday. I'm the manager of fuel quality and environmental planning for Suncor Energy.

Mr. Chairman, ladies and gentlemen, thank you for allowing us to come here today. In the next 10 minutes, or hopefully a little shorter, I'd like to talk to you about our company's key positions on the topic of Bill 185, the Environmental Protection Amendment Act, after which we'll answer your questions. I'd also like to introduce my colleague Mike Kandavy, who is our senior adviser, regulatory affairs, at Suncor Energy.

The new Suncor, recently merged with Petro-Canada, is the largest energy company in Canada. Our assets range from the B.C. interior to offshore Newfoundland, from the North Sea to Libya, and from the high Arctic to Colorado. However, the vast majority of our assets are here in Canada.

More specifically, Suncor is a major investor in Ontario. We have a petroleum refinery in Sarnia and a world-class lubricants plant in Mississauga. We operate five product terminals to support our extensive retail Petro-Canada and Sunoco gas stations. We're also a partner in the Ripley wind farm. In 2008, we spent nearly half a billion dollars in Ontario working with nearly 1,800 Ontario businesses. Our St. Clair ethanol plant is the largest in Canada, and we've recently announced a \$120-million expansion to double its size.

Suncor is a unique Canadian-based and Canadian-controlled company. That gives us also a unique oppor-

tunity and a responsibility to develop publicly owned energy resources in ways that are consistent with Canadian values and maximize the benefits for our country and all of its citizens.

1500

With regard to Bill 185, the Environmental Protection Amendment Act, our company has a long history of co-operation with the Ontario government, and you can be assured that we will continue to work with Ontario on the implementation of a greenhouse gas emissions trading plan.

This afternoon, Suncor would like to address three issues: first, the role of a cap-and-trade system in a sustainable energy strategy that respects provincial jurisdiction but allows for a broad integrative perspective on energy, the environment and the economy; secondly, we'd like to speak about elements of a well-designed cap-and-trade system; and thirdly, the need to maintain investor confidence.

A cap-and-trade system could be a key instrument to induce reductions in greenhouse gas emissions from large stationary emitters. However, in a sustainable energy strategy, thoughtful consideration must be given to the interactions of cap and trade with other elements of energy and environmental strategies, including transportation.

If we are not careful, stand-alone climate change policies can result in the pursuit of inefficient or ineffective solutions. Suncor would be concerned if a cap-and-trade system was asked to carry too much of the climate change burden. We would also be concerned if jurisdictional issues forced companies with significant national operations to make sub-optimum investments in multiple jurisdictions; a tonne of CO₂ reduced in Quebec or Alberta should be recognized the same as a tonne reduced in Ontario is.

A cap-and-trade system on its own is not sufficient to incent innovative technology. To achieve significant real long-term emission reductions without capping economic growth will require innovative and transformative technologies to be developed. Cap and trade enables economic efficiency of compliance costs but does not necessarily enable access to capital to develop technology. Therefore, support for technology outside of the cap-and-trade system is vital. A well-designed cap-and-trade or emission-pricing system is only one component of a comprehensive, sustainable energy strategy reflecting environmental, economic and social goals. A cap-and-trade system is most effective when emitters have access to the widest range of domestic and international offsets for lowest cost compliance.

The competitiveness issues of trade-exposed sectors must be addressed. Alignment with other jurisdictions is imperative, as boutique solutions will unnecessarily burden Ontarians and distort our markets. Suncor prefers a cohesive and aligned approach with the dominant North American system and equivalency with the Canadian federal regime. We need to ensure a level playing field, so that Ontario petroleum refineries are not competing

against refineries that are not constrained by the same environmental requirements.

Discussions on cap and trade inevitably lead to debates over the allocation of greenhouse gas allowances. Fully developing this subject is beyond the scope of today's hearing, but Suncor is prepared to work with Ontario as it develops its thoughts on allowances. Recent US proposals for cap and trade allocate allowances to refiners for their direct emissions but also hold refiners responsible for their customers' emissions. If Ontario is contemplating a similar design, we would ask you to think of the implications and consequences of attributing responsibility to refiners for an element over which we have no control.

Absolute caps should be set on a company basis, and baselines should be reflective of normal operating conditions. Further, a provision for growth to ensure economic success of the province and the country is essential. If hard caps are placed on existing facilities, then a mechanism to enable growth must be developed. For refineries, the definition of growth must include increased complexity to allow for changes in product specifications and feedstocks.

Mandatory reporting must balance the accuracy desired from the system with the cost of producing results. Setting an appropriate, clear and not unduly volatile price on carbon dioxide facilitates the positive outcomes of a well-designed cap-and-trade system.

The last point we'd like to raise today deals with investor confidence. Maintaining investor confidence is critical to funding capital investments in technology. Measures to provide price stability and ensure competitiveness of industry should include the establishment of a technology fund to moderate costs and provide help to fund transformative technology from discovery to development to demonstration and early deployment. An emissions pricing policy also needs to take into account planning and investment horizons as well as the capital stock turnover rate for existing facilities to ensure investor confidence.

In summary, a cap-and-trade system can be a useful instrument in a sustainable energy strategy. However, interactions with other climate change policies, such as renewable fuel standards and a low carbon fuel standard must not impede access to the lowest cost compliance alternatives. A well-designed cap-and-trade system is equitable, flexible and addresses the concerns of energy-intensive, trade-exposed sectors while achieving greenhouse gas reduction objectives at the lowest cost to society.

Further reductions to greenhouse gas emissions in industry are contingent on the pace at which relevant technology advances. So maintaining investor confidence is critical to funding capital investment in technology.

Thank you for your time. We'd now be ready to answer any questions.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Mr. Barrett is first up.

Mr. Toby Barrett: Thank you, Chair, and thank you to Suncor for the presentation.

You indicate that it is hard to pin down some of the numbers on this. I was just reading a recent report that was funded by TD Bank, and they've come in with a ballpark figure of \$8 billion to meet the federal government goal of reducing emissions by 25% below 1990 levels. In your business book, is there any ballpark figure on the federal government goals? What would that add to the price of, say, a litre or a gallon of gasoline?

Mr. Mike Cassaday: We don't have any numbers on that. One of the problems is the uncertainty in all the systems. Until there are actually rules devised for a cap-and-trade system of any sort, it's really impossible to put a cost against it. The technology to comply with any of these regulations is unknown, in many cases, at this point.

Mr. Toby Barrett: I guess these products can be refined anywhere, on either side of the Canada-US border, for that matter.

Mr. Michael Kandravy: We compete in the Atlantic basin, so it's product imports from the Middle East, Europe and also the Atlantic seaboard. It's a very competitive environment.

Mr. Mike Cassaday: Montreal used to have six refineries. There are only two there now. The rest did not survive competition in the 1970s and early 1980s.

Mr. John Yakabuski: I just noticed that—

The Chair (Mr. David Oraziatti): A brief question.

Mr. John Yakabuski:—in more than one section here, you alluded to the importance of jurisdictional qualities when instituting a cap-and-trade system. I was listening on the radio while I was driving here this morning to someone talking about the importance of a basically continental cap-and-trade system, because other than that, if it's in little parcels, it's going to be very difficult to work properly. Would you agree with that?

Mr. Michael Kandravy: That's why we talk about boutique solutions. Then you would not have a level playing field. If Ontario has unduly high caps versus even other jurisdiction, in the WCI, it puts us on an unequal footing.

Mr. John Yakabuski: That was something in the discussion this morning, and it seems to make sense.

Mr. Mike Cassaday: If I may add briefly to that, the lowest cost reduction solutions may all be in one jurisdiction, and I frankly think that society wants us to pursue the lowest cost. It shouldn't be about the highest cost CO₂ reductions. If you can get all your low-cost benefits in jurisdiction A and the highest ones are B and C, we should be encouraged to go after the ones in A and accomplish the goal at the lowest possible cost.

The Chair (Mr. David Oraziatti): Thank you. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Thank you for coming here today and making a presentation. Have you done an analysis of how much this bill may reduce demand for your product in the Ontario market?

Mr. Mike Cassaday: That's a very interesting topic of conversation these days. At the end of the day, it has to have an impact on product demand. The range of predictions on that is very, very wide.

Mr. Peter Tabuns: Is there a range that your company is using for its corporate planning?

Mr. Mike Cassaday: Not at this time, no.

Mr. Peter Tabuns: Okay. In the development of this bill, to what extent should this bill meet greenhouse gas reduction targets through offsets, and to what extent should it meet its targets through reducing consumption of fossil fuels? Do you have a position on that?

Mr. Michael Kandravy: Well, we want to pursue the lowest cost option. So if offsets provide us the lowest cost solution to start with, let's pursue offsets while emerging technology gets commercialized and then fits in to our investment time horizons so we can implement it. For example, we have a long investment time horizon in our refineries—three to five years.

Mr. Peter Tabuns: Sorry, how many years?

Mr. Michael Kandravy: It could be three to five years by the time the technology is identified, designed, implemented and goes through all the environmental approvals. Then we have to wait for the right turnover on asset, and on timing of that.

Mr. Peter Tabuns: Is your company doing an analysis of its potential liability from climate damage that is being done to agriculture, fisheries and forests?

1510

Mr. Mike Cassaday: I don't think any company is doing that. There are a number of studies out there on the cost of climate change. Suncor has not done specific research of our own.

We have been very strongly reducing our environmental footprint. If you check our record with our operations, we have a long-term trend of reduced greenhouse gases per unit of production. You may have also read recently that we've announced some dry tailing programs in the mining operation in Fort McMurray. Sustainability is very important to Suncor.

Mr. Peter Tabuns: So do you make—

The Chair (Mr. David Oraziatti): Mr. Tabuns, that's time, thank you. Ms. Jaczek.

Ms. Helena Jaczek: Thank you very much for coming here.

In the design of the cap-and-trade system, clearly our government wants to maximize Ontario's trading opportunities, but there's also the issue of potential trading sanctions. Do you have any suggestions how to walk that line or how the design could allow for, obviously, investment but not lead to any detriment?

Mr. Mike Cassaday: We'd really like it if everyone could just hold hands and come up with one answer all at once, and the reality is that that's not happening. Therefore, those who go out front are exposed to more risk.

Ms. Helena Jaczek: So in other words, you're supportive of the Western Climate Initiative, the joining together as much as possible with like-minded jurisdictions?

Mr. Mike Cassaday: If necessary, yes. We would like a US federal system, a Canadian federal system and, truly, an aligned North American system.

Ms. Helena Jaczek: I just wanted to follow up a little bit: You talk about transformative technology. If Bill 185

should pass, there is a provision for auctioning, as you know. Where would you see those revenues going?

Mr. Mike Cassaday: They could partly be diverted into developing truly transformative technologies. We've done a lot of work with the Ministry of the Environment on what is possible within our refinery operation. We've shared a lot of detail with them. There are no magic bullets. I can't conceive of a refinery that's using 80% less energy than it currently is, and so something has to change. There have to be some new solutions out there, and without technology investment we're not going to find them.

The Chair (Mr. David Oraziotti): Thank you. That's the time we have for your presentation. Thanks for being here today.

IMPERIAL OIL LTD.

The Chair (Mr. David Oraziotti): Our next presentation: Imperial Oil. Good afternoon, gentlemen. Welcome to the Standing Committee on General Government. You have, as you know, 10 minutes for your presentation and five for questions, so just state your name for the purposes of Hansard and we can begin when you're ready.

Mr. Jim Hughes: Yes, certainly. Thank you very much, Mr. Chairman and members of the committee. My name is Jim Hughes. I'm manager of energy analysis in the corporate planning department of Imperial Oil Ltd. With me today are my colleagues Cindy Christopher, our corporate manager for safety, health and environment, and Jean-Sébastien Rioux, our provincial government affairs adviser. On behalf of Imperial, we'd like to thank the committee for the opportunity to appear before you today to present some of our views on Ontario's plans to control emissions of greenhouse gases through implementing a possible emissions trading system.

I'm sure that Imperial and the Esso brand are familiar to most of you, but let me give you a very brief introduction. We're an important participant in the Ontario economy and have been since our founding in the Petrolia area back in 1880. We operate two major petroleum refineries in Ontario—in Sarnia and in Nanticoke—with a combined capacity to process about 230,000 barrels a day of oil. That's equivalent to about 40% of the total petroleum products consumed in Ontario. We also operate a petrochemical plant integrated with the Sarnia refinery, one of our two research laboratories in Canada, and plants producing asphalt and lubricants. We have a network of distribution terminals and agencies supplying fuels and other products across the province. In all, we employ about 2,000 people in Ontario directly and paid over \$40 million directly in taxes recently, as well as collecting taxes for the province of over \$850 million in the form of sales and fuels taxes. Over 600 familiar Esso-branded stations supply the transportation fuels that keep Ontario moving.

Turning to slide number 3, we want to note from the outset, of course, that Imperial concurs with the need to

take actions to control GHG emissions. The risks to society and to ecosystems of growing concentrations of CO₂ in the atmosphere could be severe. I'm sure as well that you appreciate that controlling GHG emissions, including the design of cap-and-trade systems, can be an extremely complicated subject.

Our time is limited. We want to focus on just a couple of key points to consider as Ontario advances its plans. These are the same points that we have provided more extensive comments on to the appropriate officials developing those regulations, and we very much appreciate Ontario's willingness to consult and engage stakeholders. We look forward to an ongoing, constructive working relationship.

The most important point we'd make under our key points is that a cap-and-trade system such as is contemplated is basically a means of carbon pricing—putting a price on GHG emissions so that emitters are economically motivated to reduce emissions in response to that price signal. We believe that carbon pricing, through a cap-and-trade or other means such as a carbon tax, is a means to achieve the greatest emission reductions at the least overall cost to society as a whole. However, to be effective, any carbon-pricing system should strive to provide a stable, predictable cost of carbon and one that applies as uniformly and as broadly across the economy as possible.

Our second point is that we favour a nationally coordinated approach in Canada, one that is aligned with our major trading partners as our policy and theirs develop, as well as different regimes developed internationally. International trade issues and protecting the competitiveness of Canadian and Ontario industry will be a challenge that needs to be addressed, and we'll say more about these points.

First, turning to the next slide, I'd like to step back and provide some larger global context to our views on climate policy in general, beginning with our views on the overall energy situation, recognizing that CO₂ emissions are ultimately driven by the way that economies use energy. The most important fact in this context is that energy and a growing use of energy remain essential for economic growth. The twin drivers of population growth and global economic growth, especially in developing countries, will mean the world will require and use substantially more energy in the future than today.

Even with significantly greater improvements in energy efficiency than anything we've seen historically, we expect that world energy use will increase by about 35% from 2005 levels by 2030. To meet that growing demand, the energy industry will need to develop all its forms of energy, and we anticipate that that will include very strong growth in all the major renewables—wind, solar, biofuels—perhaps approaching 10% annual growth, which, compounded over a period of a couple of decades, amounts to very substantial growth. However, even with that growth in renewables, the major hydrocarbons—oil, natural gas and coal—will continue to provide a major share—about 80%—of that growing world requirement.

Developing new energy supplies to meet that will be a major challenge for the energy industry. Canada, of course, has a great opportunity to participate in that challenge and one that Ontario can benefit from as well. For example, the Canadian Energy Research Institute estimates that oil sands development in Canada could contribute over \$100 billion to Ontario's GDP alone and generate over one million person-years of employment in this province.

However, the story for climate change policy is that checking and ultimately reversing the world's growing CO₂ emissions is very much a long-term proposition, calling for reasonable actions today to improve energy efficiency and better energy use while ultimately looking to the development and large-scale deployment of major new innovative energy technologies.

From that perspective, turning to the next page, our views on climate policy are founded on a very few key principles. As the outlook I just described illustrates, changing the world's rising trajectory of carbon use is a huge task. It will be costly. Given the enormity of the task, that makes it more important that the actions we take and policies we adopt be aimed at realizing emissions reduction at the least cost to society. The best way to contain costs is to use market prices, including market prices of carbon, to drive the selection of solutions. Ontario has recognized that by its decision to adopt a cap-and-trade system in which emitters will make decisions about where and how to reduce in response to carbon emission price signals arising from the trading system. To be effective in meeting that objective, we feel it is important that those carbon prices be both uniform across the economy and predictable. Other important principles follow along as well. This is ultimately a global challenge, so we must work on a global scale.

1520

Proposals for a cap-and-trade system can be extremely complex, and it will be important to minimize this complexity, to reduce the administration costs. Since the whole logic of a cap-and-trade system is based on people responding to a price signal, obviously we must aim for maximum transparency.

I'd like to turn to the next slide. Let me elaborate on the first of these principles: that carbon prices be uniform across the economy; and predictability. "Uniformity" means that all emitters, including all users of carbon-intensive goods and services, see the same carbon price, the same value to reduce emissions. Only in that way can we be sure that emission reductions will be achieved via the least cost and only the least cost. Having predictable emission prices makes it easier for emitters to make decisions about making investments to reduce emissions.

Turning to the next slide: The risk of price volatility and unpredictability, however, is inherent in some trading systems, and a very real risk. The price of emission allowances in any emissions trading is subject to unpredictable variables which contribute to that volatility. That potential for volatility is increased if, at first, trading is confined to a relatively small market.

One further consequence of this volatility is that some will look for opportunities to profit from purely speculative trading and volatile price swings. We are dealing, after all, with the creation of a whole new financial market with a new financial instrument. Inevitably, things like derivatives, options, futures—the whole basket—will arise on those. Activity of emissions allowance brokers and traders aimed at trading on price volatility can too easily take the emphasis away from the real task of reducing emissions.

That's why we feel it is so important to include in any trading system measures to limit carbon price volatility and so help contain compliance costs. There are a number of ways in which we can do that, and they're enumerated in the slide.

I want to turn, in the time I have available, to the other major topic, which other speakers have touched on, and that is the need for a nationally coordinated approach.

In Canada, two provinces have already implemented two very different approaches to controlling industrial GHG emissions through carbon pricing, and the federal government is working on their own, while Ontario is clearly contemplating and working hard on developing its own design. We are a company that has business operations in all 10 provinces and the territories as well, and we would be very concerned, as I think others in the same boat would be, about the prospect of a patchwork of very different regulatory regimes to address carbon dioxide emissions across the whole country. Hence the importance of a consistent approach.

A second area where policy alignment is important is with our major trade partners, especially the US. An important thing there is at least to make sure that we have comparable burdens on industry in either country, to protect competitiveness, and comparable carbon pricing.

Perhaps I could conclude with our final points. We note again that cap-and-trade as a way of carbon pricing is a means to achieve emission reductions at least overall cost—and the necessity within that for measures to ensure that costs of carbon and the price signals are stable and reasonably predictable to facilitate investment decisions on emission reduction, and uniformly across all players in the economy; and maintaining that nationally coordinated approach, ultimately aligned with our major trade partners.

Thank you very much for your attention. We look forward to your questions.

The Chair (Mr. David Oraziotti): Thank you very much. That's the time that we have. Mr. Tabuns, go ahead. You're up first.

Mr. Peter Tabuns: Thanks for coming and making a presentation today. You've done an analysis of this act, and I'm sure you've looked at the Western Climate Initiative, the Waxman-Markey bill etc. To what extent do you see a reduction in the market for hydrocarbons from the implementation of these acts?

Mr. Jim Hughes: We don't have a projection specifically of those particular acts, in that there are still many policy imponderables in those and a lot will depend

on the details. For example, we don't know the prices that will emerge, and obviously demand will be a response to that.

What we do every year, in conjunction with our colleagues at ExxonMobil, is an annual outlook at the overall outlook for energy in the world: Canada, the United States and elsewhere. We anticipate, without making specific policy forecasts, that there will be policy to facilitate greater energy efficiency as well as ongoing technical efficiency improvements. That forecast, incorporating those, is the one I was outlining earlier, which still sees the world demand for energy in total growing by 35% between 2005 and 2030.

Mr. Peter Tabuns: So you don't actually see a reduction in demand for your products from these pieces of legislation.

Mr. Jim Hughes: It will vary market by market, but the world's requirements for energy are so great, particularly arising in the developing world, that all forms of energy will be needed to meet that growing demand.

Mr. Peter Tabuns: You cited a value—

The Chair (Mr. David Oraziotti): Mr. Tabuns, it's time. Thank you.

Ms. Jaczek, go ahead.

Ms. Helena Jaczek: Yes. It's interesting to hear you come down more on the side of a carbon tax. Earlier today we did hear some very negative comments in relation to the carbon tax, as BC is proceeding. As a global company, could you give us some of your experience related to where cap-and-trade has been instituted, perhaps in Europe?

Mr. Jim Hughes: I can't speak personally about Europe. I have had conversations, of course, with European colleagues on that, but I think Europe is a perfect illustration of the concern we have around price volatility. Of course, everyone is familiar with what happened in the European first phase, where the price of CO₂ allowances was at one point fairly high—I forget the exact number—but it quite suddenly crashed to only a few euros a tonne, ultimately to wither out at less than one euro a tonne. That was off some initial bad information, I understand, and it illustrates the problem with getting the design right and the exposure that one has to price volatility. No one could make intelligent decisions about investment in those circumstances.

I think it also illustrates one other point, and that is the necessity in implementing such a system around having good governance and controls around the market. The way the information about the long position in Europe came out led to a sudden move in the price within the course of a trading day, I understand. That could be a potential concern.

The Chair (Mr. David Oraziotti): Thank you.

Mr. Yakabuski, go ahead.

Mr. John Yakabuski: Thank you for joining us this afternoon. Clearly, notwithstanding Ms. Jaczek voicing some doubt as to whether this was going to be passed—we know it's going to be passed; they have an absolute majority. It will be passed and it will be passed before

Christmas because they want to make sure that they can sell it as they've just gone out and saved the world now before Christmastime and they want everybody to know it. But the reality is that there will be a lot of work to do on this after the bill is passed. It would seem to me that there needs to be an awful lot of discussion, not only between those that want to see whether it will be a cap-and-trade system or a carbon tax, but some way of evaluating carbon, its costs and the payments for its effects—that there is an awful lot of work that needs to be done before they write regulations on this piece of legislation. Would you not agree?

Mr. Jim Hughes: I would agree absolutely, sir, with that comment. There's a lot of work to be done. Fortunately, Ontario does seem to be very willing to consult and work with stakeholders such as industry in the development of those regulations, and we look forward to an ongoing constructive relationship in the course of that work. But there is a lot of work to be done; I would agree.

Mr. John Yakabuski: Thank you.

The Chair (Mr. David Oraziotti): Mr. Barrett.

Mr. Toby Barrett: You advocate a carbon tax as being revenue neutral, and I would assume that it's an easier and more direct way to invest in the technology fund, for example. How would you envision a technology fund? Is this grants, loans, interest-free loans?

Mr. Jim Hughes: First, let me clarify: We are on the record as supporting a carbon tax as a way to provide a much clearer, more stable carbon price signal. We recognize that as not only where Ontario is going, but we're prepared to work with Ontario on its preference. As to revenue neutrality, that isn't necessarily a given with a carbon tax; that's certainly our strong recommendation.

With respect to a technology fund, a model there is something like that which Alberta currently has or which the federal government had contemplated in one of its design proposals, whereby, as a compliance option, should the price of allowances be too high, firms would have the option of paying into a technology fund, earning compliance credit toward its obligations in the course of that, with the money ultimately being used toward the development and eventual deployment of those major transformative technologies that I think everyone agrees will ultimately be needed.

The Chair (Mr. David Oraziotti): That's time. Thank you for coming in today. Thank you for your presentation.

1530

REGISTERED NURSES' ASSOCIATION OF ONTARIO

The Chair (Mr. David Oraziotti): The next presentation is the Registered Nurses' Association of Ontario. Good afternoon. Welcome to the Standing Committee on General Government. You have 10 minutes for your presentation. You can state your name, and you can begin when you're ready.

Mr. Kim Jarvi: Good afternoon. My name is Kim Jarvi and I am the senior economist with the Registered Nurses' Association of Ontario. RNAO is the professional association of registered nurses, who practise in all roles across Ontario. Our mandate is to advocate for healthy public policy and for the role of registered nurses in enhancing the health of Ontarians. With me today is Rob Milling, the director of health and nursing policy at RNAO. We welcome this opportunity to present our submission on Bill 185 to the Standing Committee on General Government.

I come to you with a simple message: Registered nurses want to inject a sense of urgency into the whole climate change discussion. Climate change is a serious threat to the planet and requires bold leadership as opposed to half measures. RNs are very concerned about climate change because of the severe environmental and health implications. In Ontario itself, climate change affects health through extreme weather events, killer heat waves, poor air quality and the spread of diseases. Particularly at risk are communities in the far north. By fighting global warming, we know that we're not merely protecting the environment; we're protecting the health of Ontarians and we're also protecting the health of vulnerable populations across the globe.

Canada's performance on greenhouse gases has been, unfortunately, dismal. Under the Kyoto Protocol, Canada was to have lowered its emissions by 6% below 1990 levels. Instead, by 2007, these emissions had risen by 26%, or 33.8% above their target. Ontario has not done much better: Its 2007 emissions were 13% higher than in 1990 and 20% above Canada's Kyoto target, which was 6% below 1990 levels.

The science is clear: The costs in human terms of failure to act are incalculable, particularly among the most vulnerable populations in the developing world and here in Canada.

Failure to act is also really bad economics. You'll be familiar with the Stern review of the economics of climate change. It concluded that business as usual could incur costs at least an order of magnitude larger than the costs of stopping excessive greenhouse gases. Particularly, they estimated a loss of GDP in mitigation of 1% as opposed to a possible drop in per capita consumption of 20%. That's quite a good payback on investment on mitigation, so I think Ontario is moving in the right direction.

I'd like to acknowledge the steps Ontario has taken. It will close its coal-fired generating plants, but not until 2014. We're urging acceleration of those closures. Secondly, its 2007 climate change action plan promised to cut greenhouse gas emissions by 15% below 1990 levels by 2020.

However, based on the work of the respected Inter-governmental Panel on Climate Change, we join health and environment groups across the country in calling on Canada to cut those emissions by 25% to 40% by the year 2020. That's a much bigger cut. The evidence right now is, in order to get where we need to go, developed countries have to cut even more deeply than we've

already committed to. This is the KYOTOpus campaign, which seeks to take the Kyoto Protocol to the next stage.

The third element we acknowledge here is Bill 150, the Green Energy and Green Economy Act. If it's properly supported, it has the potential to transform Ontario into a greener province relying increasingly on clean, renewable energy such as solar and wind power. We would urge very aggressive targets for reliance on clean energy, higher than those promised so far.

Finally, Bill 185 itself, the current bill, would put a price on carbon. We do support a price on carbon, but urge that the carbon tax option receive first consideration over the cap-and-trade that's on offer at the moment. I don't have time to go into the full argument right now. Our submission explains it in more detail. The previous speaker did a lot of our work for us, so we thank him for that kindness.

Essentially we're concerned that the more cumbersome and bureaucratic cap-and-trade system will be long in coming, much more costly to administer and subject to regulatory capture, as was hinted at by the previous speaker. All this would make hitting targets more difficult.

Cap and trade need not preclude a carbon tax, but we want to keep the carbon tax on the table. We urge the government to keep the carbon tax option open. If it does proceed with a cap-and-trade system, then it must take all necessary measures to minimize the considerable risks and potential disadvantages of cap and trade.

Here are the steps:

(1) We'd like appropriate and aggressive targets, and we've already asked for 25% below 1990 emission levels by the year 2020.

(2) We'd like a hard enough cap that the targets are reached. We know the previous speaker spoke about the European experience: Basically, they gave away too many permits and the low price reflected the fact that it wasn't a hard enough cap. It's hard to hit your targets that way.

(3) The coverage has to be as comprehensive as is feasible. If you exclude emitters and emissions, it becomes that much more difficult to hit your targets.

(4) We urge the auction of permits. If you give away the permits, that's just a recipe for the gaming that the previous speaker warned about. It's also more difficult to oversee and enforce. Giving away permits also disadvantages newcomers to the industry. In any case, however you distribute these permits, we urge that permits not be permanent.

(5) We urge exclusion of offsets or strict limits on them. Some trading systems allow offsets for activities that reduce greenhouse gases. If you're going to allow them, they must be real, verifiable and permanent. But they're really subject to gaming, so you really have to be very, very cautious with them.

(6) Respect for the principle of environmental justice: We want a fair and equitable sharing of environmental risks and benefits. We also want fair access to information and decision-making, and a transparent process.

In particular, we want to make sure that low- and moderate-income people are not hurt by carbon pricing. A universal refundable carbon tax credit would be one approach to address that problem.

That brings me to our recommendations:

(1) Endorse the KYOTOplus target of reducing Ontario's greenhouse gas emissions to 25% below 1990 levels by 2020.

(2) Preserve the option of implementing carbon taxes, such as taxes on energy use.

(3) Include in the preamble of the bill an endorsement of environmental justice or the equity principle and the precautionary principle.

(4) Mandate transparent public consultations on any resulting regulations and make sure they are broadly accessible, particularly to vulnerable populations.

(5) Amend the bill to ensure that all greenhouse gas emission permits are auctioned and that they do not confer permanent rights to emit.

(6) Avoid offsets, and if you're going to do them, strictly limit them to a small percentage of an individual emitter's emissions, and ensure that they are for real, verifiable and permanent reductions in greenhouse gas emissions.

(7) Finally, something I didn't speak to in the speaking notes: Remove or clarify the section of the bill that generically enables regulations governing economic and financial instruments for environmental purposes. Failing that, augment it by allowing the named instruments to be distributed by auction, sale or other means that are not free of charge. At the moment, the only option for distribution is free, and that's problematic.

The Registered Nurses' Association of Ontario thanks the Standing Committee on General Government for the opportunity to provide these recommendations, which we hope will realize the vision of a clean, green and sustainable energy future for Ontario.

We await your questions.

The Chair (Mr. David Orazietti): Thank you very much for your presentation today. Ms. Jaczek, if you've got questions, you're up.

Ms. Helena Jaczek: Thank you very much. I'd certainly like to commend RNAO for bringing a health perspective. Obviously, climate change is already having, and will have, a major impact on human health.

Specifically in relation to your recommendations, when you say "strictly limit" offsets "to a small percentage," could you give us an idea of what you mean by "small"?

Mr. Kim Jarvi: Well, our preference would be zero, but I've seen other figures, like 10%. We're talking very limited; otherwise, it's a way to get around—

Ms. Helena Jaczek: You're thinking on the order of 10% or less?

Mr. Kim Jarvi: That's what I've seen in other suggestions.

1540

Ms. Helena Jaczek: Again, as you know, this bill does propose auctioning. What would you see the proceeds—the auction revenue—going toward?

Mr. Kim Jarvi: In part, I would see it addressing any redistributive effects as a result of changes in prices, and I suggest that, like a carbon tax, it be refundable.

Ms. Helena Jaczek: So it's like a tax credit?

Mr. Kim Jarvi: Yes. The two approaches are really two sides of the same coin. You're trying to raise the price on carbon, but you can also use those revenues to replace other less efficient taxes and you could also use it to promote energy conversion and greener energy.

The Chair (Mr. David Orazietti): Mr. Yakabuski?

Mr. John Yakabuski: Thank you very much for joining us today, Kim. A couple of things: I'm sure you're aware that Ontario produces less than 1% of the world's greenhouse gas emissions. When we talk about global climate change, China and India were exempt from Kyoto and they've been exempt from any subsequent climate change talks or initiatives. How do we square that with reducing greenhouse gases? One of the reasons that have been cited to exempt them is that they need to have those exemptions to be able to continue to build a better standard of living, because they can't have the same economic drags that are expected to be put on the Americans or the Canadians or anybody else. How do you square your position that it's good economics? Why the justification on the Chinese and Indian economies?

Secondly, you say your mandate is to advocate for healthy public policy in the role of registered nurses and to enhance the health of Ontarians, and you use the precautionary principle. I'd like to know if you believe that the precautionary principle should have been enacted in dealing with the growing concern about the health effects of large-scale wind turbine developments and the effect they may have on people in the province of Ontario. Do you believe in the precautionary principle in that regard or just in some regards?

Mr. Kim Jarvi: No, we're not being selective here—I'll take your questions one at a time.

The issue of China is something that I believe has to be pushed, and the developed countries have to take a leadership role here; we're the ones who cause the bulk of the problem right now. I spent a month in Beijing. I just came back from there, and I can tell you that the pollution problem is horrific.

Mr. John Yakabuski: So we'd be the bulk here?

Mr. Kim Jarvi: No, I'm saying this is a cumulative process. Once carbon dioxide is put up in the air, it stays in the air for centuries; it's very long-lived in the air. So the cumulative impact is largely ours. We have to take the first steps, but at the same time, by hook or by crook, we have to drag the other countries along as well. We have a leadership role, and I think there's a very strong consensus among environment and health groups on the 25% below 1990 levels.

With respect to the precautionary principle, we're talking about acting where there's a clear and present risk to health; don't wait until all the evidence is in. In the case of wind turbines, we're talking about balancing one health risk against another health risk. In that case, you're still invoking the precautionary principle, but you're

looking for something that does the least damage to health and the environment. That's an empirical matter.

The Chair (Mr. David Orazietti): Thank you. I have to stop you there. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Thanks very much for the presentation today. The offset issue: How should the cost of verifying and auditing offsets be charged? Who should be carrying the cost for that?

Mr. Kim Jarvi: That, to me, is just a bureaucratic nightmare. You're just asking for trouble. How are you going to verify that these are legit, particularly if they're cross-border, and we already have examples.

Who's going to bear the cost of that? Obviously, it's going to be the taxpayer, and I'm not sure that that's where we want to go. Even 10% is going to give you so much bureaucratic headache that it's something I'd ask you to think about very carefully before wandering into it.

The Chair (Mr. David Orazietti): Thank you for coming in today, and thanks for your presentation.

UNION GAS

CANADIAN GAS ASSOCIATION

The Chair (Mr. David Orazietti): Our next presentation is from Union Gas/Canadian Gas Association. Good afternoon, and welcome to the Standing Committee on General Government. You have 10 minutes for your presentation. Please state your name, and you can start when you're ready.

Mr. Mel Ydreos: My name is Mel Ydreos and I'm joined here by my colleague David Sword. I'm the vice-president of marketing and customer care for Union Gas, and even though Union Gas's head office is in Chatham, I'm personally based here in Toronto. David is the director of governmental and aboriginal affairs for Union Gas, and he's also the director of Canadian federal governmental affairs for our parent company, Spectra Energy.

On behalf of Union Gas, we would like to thank you for the opportunity to appear before your committee to discuss our comments and perspectives with respect to Bill 185, essentially an act to establish a cap-and-trade mechanism with the province of Quebec.

Union Gas is a Spectra Energy company. For those of you who may not be familiar with Spectra Energy, let me very quickly provide an overview for you. We're one of North America's leading natural gas infrastructure companies. We are a Fortune 500 business, and in fact we were recently ranked in Fortune's annual listing as the most admired pipeline company in the world. This recognition is bestowed upon a company by peers and industry observers.

Spectra's role is to gather, process, store, transmit and distribute natural gas to the markets. Our opinions expressed here today are informed by Spectra's experience in operating in over 25 states and seven provinces, and drawn from our experiences in actively participating

in such initiatives as the Waxman-Markey bill, the Kerry-Boxer bill, the Western Climate Initiative, the government of Canada climate change consultations, the Ontario-Quebec cap-and-trade initiative and the British Columbia carbon tax experience.

We have a very significant presence here in Ontario through Union Gas, bringing natural gas services to over 1.3 million homes and businesses in the province and serving Ontario's industrial heartland; and also by operating one of North America's largest natural gas storage facilities, an asset that attracts much gas supply to Ontario and helps ensure that the province remains firmly attached to the North American pipeline grid.

In fact, Union Gas has over half a billion dollars in new investments in Ontario in the last three years, bringing jobs, energy security and clean, affordable natural gas to Ontario. This investment has allowed our throughput, and therefore the contribution of natural gas, to increase by over 22% since 2006. This increase in natural gas helps fuel Ontario's economic growth and provides for the new generation of gas-fired power plants that are helping to meet our energy needs while removing coal from the energy mix, thus significantly improving our air quality and reducing our province's greenhouse gas emissions.

More of such investment in clean energy and conservation will be required, and nowhere is this issue more pressing than in the debate on how to best address the issue of global climate change. All discussion of climate change acknowledges a fundamental truth about addressing the climate change challenge: It comes with a very visible cost, albeit while delivering benefits that are not so immediately visible.

1550

We believe that a carbon tax, not a cap-and-trade system, better stimulates the substantial behaviour shift we need and, very importantly, recognizes the power of energy consumers to instigate change.

A carbon tax is an equitable, straightforward approach that can deliver near-term results across all sectors of our economy and promote market-based innovation as a means of lowering our carbon footprint.

A carbon tax directly and transparently applied assesses the true cost associated with emissions. Transparency is the key here. Cap and trade is too speculative, too passive and difficult to create, and has the opportunity for abuse and gamesmanship.

A straightforward carbon tax raises the cost and price of products that result in greenhouse gas emissions by adding fees to fuels that produce such emissions.

Any carbon tax should be revenue-neutral, allowing both businesses and individuals to innovate, invest and deliver lower carbon emissions from their activities and be neutrally affected or potentially even better off economically.

Taxing carbon makes existing low-carbon-emitting options more attractive, and can be a very powerful driver of investment in low-carbon technologies and future infrastructure. The methodology of cap-and-trade

is less clear, with market signals masked by the complexity and likelihood of bureaucratic and politically driven allowances.

No one likes taxes, but we know that they work predictably and expediently, and they do stimulate behavioural change.

Price signals under a carbon tax scenario are immediately felt and give us a strong incentive to reduce emissions. This is similar to the smart metering initiative, where consumers will have clear price signals with respect to the way they choose to use electricity and at what time of the day.

In British Columbia, a carbon tax was proposed, approved and implemented in just four short months. It took the co-operation of business and government, but avoided the bureaucratic mess inherent in developing cap-and-trade schemes, which typically take years to launch due to the complicated government and regulatory structuring.

There are good examples of taxes doing the good work they're meant to do. In 1989, the Canadian government introduced the goods and services tax, a national sales tax that replaced the hidden and unfair manufacturer's sales tax. While the highly visible nature of the tax made it unpopular, that did not necessarily equate to unproductive. The goods and services tax worked. It resulted in policy fairness and tax visibility, and in needed revenues, and one could argue that it helped eliminate a federal deficit and contributed to economic stability. Twenty years later, the wisdom of the goods and services tax continues to help shape Canada's policy landscape.

In the current debate around a workable climate change policy mechanism, could there be a positive parallel? We think so. A carbon tax is simple, predictable, visible and easily applied.

While we are concerned that the government has driven to a single cap-and-trade focus to addressing climate change, we continue to be open to debating and participating in other climate change mechanisms.

As Ontario develops a climate change program, if cap and trade is the mechanism chosen, we strongly urge the government to move to a system of 100% auction, whereby anyone wishing to emit would participate in an auction to obtain an allocation of whatever cap on greenhouse gas emissions has been established. This would create a clear and transparent price and, like the carbon tax, could be crafted in a revenue-neutral manner.

In the absence of a full allowance auction, companies that process and move natural gas to market need to be granted allowances adequate for volume growth on the pipeline system. That is because companies like Union Gas use natural gas to fuel the compressors that move natural gas through the system of pipelines to market. The result is, as we meet growing demand for natural gas in the economy and reduce greenhouse gases, our own company-specific emission profile will increase. For example, a large industrial customer may choose to fuel-switch to natural gas as part of their effort to reduce

emissions. This would obviously result in greater throughput on the pipeline system. While there is benefit to the industrial customer to do this, this activity should not penalize the pipeline system operator who is enabling this positive change.

Natural gas is presently making a contribution to meeting our future energy needs and reducing our greenhouse gas emissions; the closure of the coal plants is another example. In future, natural gas will continue to be relied upon to contribute, for, simply put, Ontario cannot achieve its climate change objectives without natural gas being an integral part of the environmental solution. In order for Ontario to be successful in meeting its climate change objectives, natural gas will need room to grow.

In conclusion, natural gas can continue to make a significant contribution to Ontario's energy and climate change objectives, for natural gas is an abundant domestic resource, the cleanest-burning conventional fuel, efficient, delivering value directly to customers through existing infrastructure, and becoming more efficient.

Consider the following: The average natural gas residential customer has seen their average annual consumption decrease by about 30% over the last decade or so.

It's versatile: It generates electricity, runs our manufacturing plants, heats our homes and water, and is the perfect low-emission backup for renewable sources like solar and wind. It continues to hold tremendous promise to deliver real emission reductions and it is making a significant contribution. In order to continue to do so, it needs to be formally recognized in Ontario's climate change approach.

We hope this input is of assistance to you, and we look forward to your questions.

The Chair (Mr. David Orazietti): Thank you very much for your presentation. Mr. Yakabuski, go ahead.

Mr. John Yakabuski: Thank you very much, Mel and David. It's good to see you again. Good presentation; clearly you've done some homework on this one and you've done a lot of thinking about how it might affect not only the natural gas industry but the economy as well.

But transparency, as you know, is not something that this government likes very much. I just read recently that—I mean, even with their climate change secretariat, his salary was kind of shifted through a hospital or something, just crazy stuff. So they didn't really want to pay the guy upfront; they wanted to slide it through the back door. So they don't really like transparency. But it is interesting that you have followed Imperial Oil, and if you had to make a choice, you'd opt for a carbon tax over cap and trade.

Now, were you part of a discussion group or anything before this bill was brought to the Legislature, before they came ahead with cap and trade? Did they meet with industry people to talk about the possibilities of an alternative mechanism?

Mr. Mel Ydreos: Specific to this bill?

Mr. John Yakabuski: Yes, specific to this bill. Did they talk to you about a carbon tax as opposed to cap and trade? Was Union Gas part of those discussions?

Mr. David Sword: We've been part of discussions with the department of the environment through the staff officials. A number of options were considered, and they just elected to pursue a cap-and-trade proposal.

Mr. John Yakabuski: So you did put forth at that time the position that you would prefer a carbon tax?

Mr. David Sword: Yes. Spectra Energy and Union Gas have indicated that a carbon tax would be our preferred option.

Mr. John Yakabuski: Okay, very good. Thank you very much. I appreciate that.

The Chair (Mr. David Oraziatti): Thank you. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Thank you for coming and making the presentation today. Good to see you again.

Does your company project that this bill will lead to an increase in the consumption of natural gas or a reduction in the consumption of natural gas, and, if so, by what amount in either direction?

Mr. Mel Ydreos: It's too early right now to make that determination, but there are two sides to that question. First of all, are there fuel-switching opportunities that would go our way, go to natural gas, because of the emissions of natural gas? Certainly. But on the other hand, when we talk to the large industrial customers, what they tell us is that their first course of action will be through efficiency, and therefore that in itself will actually lead to a reduction of the fuel. So it just depends on how much fuel-switching goes on versus how much energy efficiency goes on and how all that comes together.

Mr. Peter Tabuns: Your company recently invested a half-billion dollars in increased natural gas supply in Ontario, which means you expect to be selling more gas. In your corporate planning, what do you expect to come out of this legislation?

Mr. Mel Ydreos: A large portion of that investment was largely driven by the electric infrastructure here in Ontario. We wanted to revamp and redesign our services to that market, because the power market has very specific needs in terms of deliverability of the product, when they can nominate, when we can dispatch sufficient volumes of gas, so a lot of that infrastructure was actually built in order to support a much more flexible gas power market, basically.

1600

The Chair (Mr. David Oraziatti): Thank you, Mr. Tabuns. Ms. Jaczek, go ahead.

Ms. Helena Jaczek: In your discussion of cap and trade, and should that option—what we have in front of us—proceed, you're advocating 100% auctioning. Where do you see the proceeds of these revenues going? And also, do you see any role for offsets?

Mr. David Sword: Two parts to the question: first, 100% auction, and what would happen to the proceeds. Try to be as revenue neutral as possible, and if there were proceeds put into a fund, there are certain initiatives you can take with aggressive conservation and demand-side management to help industries reduce their greenhouse

gas emission profiles and better technology in that regard. But a strong preference to 100% auction.

I'm sorry, there was a second—

Ms. Helena Jaczek: Do you see any role for offsets?

Mr. David Sword: A limited one, for the same reasons as mentioned: It's just yet another mechanism where the verification part can be extremely difficult, especially if any is offshore as well.

The Chair (Mr. David Oraziatti): Mr. Mauro.

Mr. Bill Mauro: Thank you very much for your presentation. You referred near the end of your presentation to Canada's supply—domestic, sustainable. One of the issues that gets discussed all the time when we talk about energy production is this switch in some sectors, including Ontario, to using natural gas to produce electricity. What is the number that your company uses in terms of the identified supply of natural gas existing in Canada, if you don't mind?

Mr. Mel Ydreos: Thank you very much for the question. We've had what we've called in industry a real game-changer, and that game-changer is what's called unconventional gas. The current estimates are well over 100 years of proven reserves—

Mr. Bill Mauro: Nationally?

Mr. Mel Ydreos: Within North America.

Mr. Bill Mauro: Does that include the oil sands natural gas? Could you separate the two for me? Non-oil sands and oil sands.

Mr. Mel Ydreos: This is the new finds, based on current consumption, which would include the consumption for oil sands. We have sufficient reserves of over 100 years.

Mr. Bill Mauro: A hundred years identified now, and you don't know how much of that would be the oil sands?

Mr. Mel Ydreos: I do not.

Mr. Bill Mauro: Okay.

The Chair (Mr. David Oraziatti): Thank you. That's time. Thank you very much for coming in today and for your presentation.

GRANT CHURCH

The Chair (Mr. David Oraziatti): Our next presenter is Grant Church. Good afternoon. Welcome to the Standing Committee on General Government. You have 10 minutes for your presentation and five for questions. If you can just state your name for the purposes of Hansard, and you can begin when you're ready.

Mr. Grant Church: My name is Grant Church. Mr. Chairman, members of the committee, ladies and gentlemen, I'm the father of four wonderful children. I live in Cayuga and work in a factory in Dundas. I'm a member of the Clean, Affordable Energy Alliance, Wind Concerns Ontario and the Canadian Auto Workers.

"It seems like the public officials are the most misinformed, disinformed, uninformed, don't want to be informed people that I have seen that are in charge of all this. They don't do the research. It's remarkable, and

they're making policy." That comment, from Dana Stewart, aptly describes the McGuinty government.

It started with the coal issue and has extended to the windmill issue and now cap and trade. The government is basing this bill on the findings of the IPCC. How credible are they? What is the validity of their hypothesis? "The science is settled" mantra is a political statement, not a scientific one. Science is not about consensus, but testing hypotheses.

The IPCC claims that as CO₂ rises, the temperature will rise. According to the ice core records, temperature has always led CO₂ by around 800 years. The global temperature peaked in 1998 and has been falling since 2002, despite an ever-increasing level of CO₂ in the atmosphere. This is in stark contrast to what the IPCC predicted.

I had long believed that CO₂ was essential to keeping the planet from freezing, and that as the level rose, it would get warmer. I believed it without question. After this past winter, I had questions.

The following graph shows the growing divergence between the prediction of rising temperatures and the reality of falling temperatures. This shows that their computer modelling and possibly even the anthropogenic global warming theory is in error.

The 2,000-year graph shows that there is nothing unusual about the climate we are now experiencing. The Vikings colonized Greenland starting about 975 AD but were gone about 375 years later because of the cooling climate.

The hockey stick graph was featured prominently in the 2001 IPCC report. It is a denial of history, and it was debunked by two Canadians, Stephen McIntyre and Ross McKittrick. The graph was not in the 2007 IPCC report, but has left an impression that we are in the warmest period of the last 1,000 years, when in fact, it was warmer in medieval times. This point merely grazes the surface of this issue, but it's sufficient to prove that you shouldn't accept the IPCC or AGW theory *carte blanche*.

The windmill issue: The Premier has declared that the new windmill setbacks are safe and that it was a balanced decision—the best in the world. In June, the Ministry of the Environment issued proposals for setbacks for windmills. They would be set back "a distance equal to or more than the turbine hub height plus blade length from all roads, railways, and property side and rear lot lines."

Public meetings were held and written submissions were accepted through the Environmental Registry; about 1,000 in total, verbal and written. Many complained that these setbacks and those from homes were too short. At the Port Elgin meeting, it was announced that the goal of the meeting was to get public input. An engineer asked them how they arrived at hub height plus blade length as a setback, letting them know that it wasn't safe. They said that they used a balanced approach in terms of risk results from here in southern Ontario. On September 24, the government announced its new regulations, saying that it was a balanced approach. Windmills will be set back hub height from lot lines and blade length plus 10

metres from roads and railways. How could these two different sets of setback distances be balanced? Obviously they're not, and it's another example of the haste of the government to deploy windmills in the climate battle.

In a lengthy letter to Minister John Gerretsen dated July 7, 2009, the Canadian Wind Energy Association, CanWEA, stated the following about the proposed setbacks, including the 550 setback from homes: "CanWEA believes that these two requirements, if enacted, would jeopardize over three-quarters of all construction-ready wind projects."

Further in the letter, it goes on to recommend a minimum setback equal to one turbine plus 10 metres from all non-participating property lines and public roads. A ministry official told me that they had based the final regulations on a risk assessment report provided to them by CanWEA. The government largely ignored public input for a study paid for by CanWEA, an industry lobbyist. This is corruption and it should be investigated. The government caved to the pressure from CanWEA and compromised our safety with such short setbacks.

In a meeting at work, a Ministry of Labour official held up the regulation book and he said, "These regulations were written in blood." Is that what you want to do with windmills? Look at this picture. This is a picture from up in Shelburne. Those windmills are placed blade length plus five metres. The new regulation: a bare five metres back. In this regulation book—this is a Vestas windmill safety manual—It tells workers, "Stay back 400 metres from any operating windmill. If you have to approach, approach from the face, not the plane." In the plane of these windmills, the wings are pointed directly at the road. That is a safety violation.

Economic ramifications: Minister Smitherman said that the Green Energy Act would only increase power costs 1%. Within a few weeks, Hydro One was asking for a 24.6% increase. On Focus Ontario, he said that coal was cheap and everything they used to replace it will cost more.

1610

Last spring, he said he wanted to emulate Spain. Oh, really? What do any of you know about Spain? They built up a massive amount of gas-fired, wind, and solar capacity, like what is happening here in Ontario. Spanish industry warned the government not to do it, just like industry has warned you not to proceed with your coal closure plan. Their industrial power rate went up 100%, and many industries left the country, inducing a depression. The country now has the highest unemployment rate in the Organization for Economic Cooperation and Development, at 18.9%.

They plan to introduce cap and trade, which will sink them a little further. Since Germany introduced cap-and-trade, the price of power has risen 25%. This past spring when I spoke to this committee, Laurel Broten asked me about the benefits of the green energy plan for the steel industry in my area. The steel industry, I regret to say, is closed. I told her, "I believe your energy plan will cause

the collapse of this province.” I mentioned that AbitibiBowater and Weyerhaeuser both said that Ontario has the highest-priced power of any jurisdiction they operate in.

Where are we today? A have-not province; a record \$24.7-billion deficit; a 9.2% unemployment rate; corporate tax revenue down an unprecedented 48.1%; hundreds of thousands of jobs lost. The AbitibiBowater plant I was pleading for has shut down two of their paper machines. My union shop chairman’s wife lost her job because of a plant closure. The high price of power was one of the listed reasons. Your energy plan, along with cap and trade, are just drilling holes in a sinking ship.

The way forward: Barack Obama said, “We figured out how to put a man on the moon in 10 years. You can’t tell me we can’t figure how to burn coal that we mine right here in the United States of America and make it work. We can do that.”

Which one of you is going to tell President Obama that it won’t work? Are you calling him a Neanderthal, or saying he belongs to the 19th century?

Cease the plan to close the coal plants and get on with cleaning them up like the Germans have. They have the confidence—

The Chair (Mr. David Oraziatti): Mr. Church, you’re going to have to wrap up. That’s your time, so if you want to take 20 seconds to wrap it up, go ahead.

Mr. Grant Church: My friends from Germany asked me, “Why is Nanticoke allowed to run like this? It’s not that way in Germany.”

Didn’t Minister Smitherman notice how they used coal responsibly when he toured Germany? Or was he asleep there like he was with eHealth?

The choice is yours: Do you want a Spanish disaster or do you want Ontario to prosper again? I’d be happy to answer your questions.

The Chair (Mr. David Oraziatti): Mr. Tabuns, you’re first up.

Mr. Peter Tabuns: I have no questions.

The Chair (Mr. David Oraziatti): Ms. Jaczek, do you have any questions?

Ms. Helena Jaczek: I don’t have a question, but I’d just like to assure the deputant that as a member of the McGuinty government, I listen intently to all deputants and respect your right to express yourself.

Mr. Grant Church: Could I just make a point? I want to know how many published, peer-reviewed studies it took to act on SARS. There weren’t any; they acted immediately.

The Chair (Mr. David Oraziatti): Thanks for your comment. Mr. Barrett, do you have any questions for the presenter?

Mr. Toby Barrett: Yes, I do. Thank you, Mr. Church. In these deliberations with respect to cap and trade and climate change—and it obviously spills into energy use—we’re all elected representatives; we’re not scientists. We’re not experts in this field at all, and we rely solely on people like yourself, and citizens and taxpayers, and the people of the province of Ontario, to

basically tell it like it is, tell us what’s going on out there, what people are talking about on the shop floor where you work.

I know you do a lot of reading, and there are a lot of references here. I just wondered: Can you summarize, in your view, where is the public at on this? Where are people at, either in your area in Ontario, your union colleagues, people you’re chatting with, or do they know about the Western Climate Initiative? Do they know that we signed a deal with Utah? Probably not.

Mr. Grant Church: A lot of people at work, a lot of this they don’t care about. They think, “Oh, here comes Grant talking about wind,” or coal, or energy, or something like that. But they do respect me and I do have the respect of my community. I often write letters; I’ve spoken at a community hall. The views that I have certainly resonate on the shop floor and in my community.

Mr. Toby Barrett: Just further to that, I know a year ago last summer I received the information that Ontario was signing the Western Climate Initiative. Just out of interest—in the summertime, I have a lot more time to travel around and spend time in restaurants and chat with people; I chat with people when I’m fuelling up my vehicle and things like that. Just for fun, in a sense, I would ask people, “Did you realize that Ontario has signed a Western Climate Initiative with Arizona?” There was very little in the media about this. I found that the reaction I got was almost like, “Well, that makes about as much sense as signing one with Utah.” And I explained to them, well, Ontario signed one with Utah as well. It didn’t sign one with Pennsylvania, Ohio, Indiana or Michigan, the large industrial states right next door, or New York state, for that matter.

I find with this initiative, the cap-and-trade initiative, when this was announced—I’ve only seen one or two articles in the newspaper. We have a person in charge of this, an assistant deputy minister; he makes half a million dollars a year. This government doesn’t seem to be getting the media on this. It’s touted as one of the most serious concerns on the planet, and if it is valid, it’s second only to the tremendous increase in population.

This government is putting no information out on this. Do you have any—I mean, that may explain why you’re not getting people talking to you about it.

Mr. Grant Church: They’re caring about their jobs. That’s what they’re caring about. We’re very much caring about our jobs, and government policy that is working against us.

Here’s a point you don’t see in the news. Does anybody know what happened in Prince Edward Island on July 8? They had frost. They set a record low temperature at Charlottetown airport: 3.8 degrees. Do you think you could find that in the news? The CBC and one PEI newspaper: That was it. There’s a lot going on that people don’t know about. But the primary concern among people I know is jobs.

Interjection.

Mr. Toby Barrett: I know—we were cut off. I know the other two parties decided not to ask questions; I don’t know why. Could I take up some of that time?

The Chair (Mr. David Oraziotti): Well, that's their choice, and no, we're behind schedule as well because I've allowed members to go on a little longer.

Mr. Toby Barrett: Oh, if we're behind schedule, fine. Go ahead.

The Chair (Mr. David Oraziotti): Thank you very much. That's time. We appreciate you coming in today.

CLEAN AND RELIABLE ENERGY SUPPLY CONSORTIUM

The Chair (Mr. David Oraziotti): Okay. We're just trying to catch up here to our 4 o'clock presentation. Good afternoon, Ms. DeMarco, Clean and Reliable Energy Supply Consortium. I understand you're here as well for an additional presentation from Blue-Zone Technologies. Just perhaps if you want questions from members around—normally, presenters will have one opportunity to present in one time slot, so if you just want to address that first and then we'll get you going.

Ms. Elisabeth DeMarco: Thank you, Mr. Chair. Let me clarify. My name is Elisabeth DeMarco and I'm a partner with the law firm of Macleod Dixon. I'm appearing here on behalf of two separate and distinct clients. So it's not in effect that any one entity has more than one time slot, but rather I'm talking on behalf of two very distinct clients on different points and aspects of the bill. So I hope that there is no objection—

The Chair (Mr. David Oraziotti): There are two different presentations to make, basically is what you have—

Ms. Elisabeth DeMarco: Completely different presentations to make.

The Chair (Mr. David Oraziotti): Okay. If you want to get started on the first, you can do that.

Ms. Elisabeth DeMarco: Thank you. I'm first speaking on behalf of the clean and reliable electricity supply group. It's known as CARES in short form. CARES is a group of clean natural-gas-fired generators that is made up of TransAlta, TransCanada Energy, Sithe Global, Cardinal Power, Capital Power and Northland Power Inc. The members collectively control approximately 5,000 megawatts of generation in the province, so a very significant proportion of independent power in the province. CARES members are also members of the Association of Power Producers of Ontario.

1620

The members hope to provide the committee today with an overview of their three main considerations in relation to the bill. We've provided two pages of very detailed submissions on the specific aspects of the implementation of the bill that were outlined in the Ministry of the Environment's very detailed discussion paper that was released in June as well.

If I can start first with the three main points, it's no secret, committee members, that any number of jurisdictions are coming out with climate change initiatives at this point in time. The view that global warming is pressing is certainly being adopted by a number of Leg-

islatures, and our first request and submission is for this committee in particular and for the Legislature to help regulated generators, contract generators who are critical to achieving this province's green energy goals, in navigating this maze of competing and often conflicting climate change policy initiatives. So the first submission is that the Legislature should harmonize its efforts with those of other jurisdictions, including the federal government, and the developing US federal schemes and regional initiatives.

The second point is that we're in a realm of electricity generation that is being characterized by a new growth of green electricity. In particular, the Green Energy Act has facilitated a very significant change in the policy relating to electricity, and gas-fired generators are critical to achieving those goals. They are quickly and readily dispatchable. They are the support generators that allow for the increase in new intermittent generators to be developed across the province, so they in effect enable the government in achieving its Green Energy Act goals. We would ask that the government and the Legislature keep these generators whole. Specifically, their output is governed through a series of varied and different power purchase agreements that were set with any number of government entities, and it's our request that you ensure that the costs of complying with climate change requirements are able to be passed through, in a very transparent manner, through the hourly Ontario electricity price, in a manner that actually achieves the results that you hope for: changing consumption as a result of price impacts—a clear price signal. In summary on that point, we would ask that you keep those generators whole.

Thirdly, we would be remiss if we didn't advise the committee of concerns regarding the emissions associated with electricity imports. It is critical, if you hope to achieve your cap-and-trade goals set out in the bill and if you hope to achieve your Green Energy Act goals, that you specifically address the emissions associated with imports of electricity. We would not want to see a decrease in Ontario clean gas-fired generators displaced by imported, higher-emitting coal-fired generation, which is very possible if we do not address the emissions associated with imports. In that regard, we are submitting that you support a default emission rate being applied to import electricity based on the marginal supply of imports, which is equal to about 0.9 tonnes per megawatt hour of emissions associated with imported generation. In that way—that data is supported by the electricity data—we feel that the emissions associated with imports will be addressed in a fair and equitable manner and through a level playing field.

I can go on at this point to address the very specific detailed design parameter submissions, or I'm happy to take questions, whichever approach is best for the committee at this point.

The Chair (Mr. David Oraziotti): Ms. DeMarco, that's really your choice at this point. You've got 10 minutes for your presentation and five for questions. You have about five minutes left for comments, but if you'd like to go to questions now, we can do that.

Ms. Elisabeth DeMarco: Why don't we just touch upon a few of the high-level design features that have come up as I've been sitting at the back of the room?

One of the first is in relation to equitable caps and baselines. Certainly, we want to ensure that no one sector bears a disproportionate burden of the overall emission reduction requirements of the province, and we'd point out that industrial sectors are bearing far less of an emission reduction obligation than the electricity sector.

Another point that has come up very specifically is in relation to allocation and auctioning. The CARES consortium submits a balanced approach to auctioning consistent with both the WCI and our American counterparts. There are real, competitive dangers in getting very much out of step with our major electricity trading partner. So, in that regard, we would recommend a limited amount of auctioning in the first instance—say, approximately 10%, consistent with the approach in the US—and moving to a higher percentage of auctioning with time.

Another question that came out was in relation to the use of auction revenue. Certainly, CARES submits that the proceeds of auction revenue should be used for purposes as close as possible to the activities that the revenues come from. So we want to see reinvestment in those key sectors and true change in the province associated with reinvesting in cleaner and better technology in each of those submissions.

At this point, I think we're prepared to open up the submission to questions, and I want to thank you for your attention.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. Ms. Jaczek, you're up first, so go ahead.

Ms. Helena Jaczek: Thank you to CARES for being so involved. I understand that you've submitted a number of comments on the registry and to the Moving Forward document. I know that they've been taken a close look at.

You've clarified what I was going to ask you in relation to the proceeds of auctioning. You've certainly taken a very different approach to some of the other deputants this afternoon in terms of saying that there should be only 10% of the total allowances allowed for initial auctioning. Could you maybe just elaborate? I think this is in relation to keeping in harmony with the Western Climate Initiative, which, of course, is a very important point, but perhaps you could just elaborate a little bit more.

Ms. Elisabeth DeMarco: The best way to elaborate might be by way of example. If, for example, Ontario required 100% of its allowances to be auctioned and Ontario electricity generators were required to purchase 100% of their allowances to be used effectively as a necessary fuel to generate, and Quebec generators were given all of their allowances gratis, and both generators, an Ontario generator and a Quebec generator, were competing to serve a New York load, whose import costs would be different? Who would be at a competitive

advantage? And what would be the associated effect on electricity pricing across the border?

That's why we're taking a very moderate and principled approach. We understand that there are some efficiencies that can be garnered from auctioning, but we advocated that you do so in a measured and staged manner that's equitable across sectors.

Ms. Helena Jaczek: Point well taken. You've also heard some comments related to offsets—the difficulty of auditing, that it's costly and bureaucratic. What do you see as the role of offsets?

Ms. Elisabeth DeMarco: We see full and fair and open access to offsets, for the sole reason that most of the regulated facilities that you are actually seeking to regulate through the bill have their technology fixed at the time of construction. So the only way you can actually achieve real emission reductions is through new construction and displacement or through project-based offsets. So, particularly in the near term, in the initial stages of the bill, it is integral that this committee advocate strongly for full and fair access to offsets—credible offsets—with criteria that the province believes are certainly supportive of its integrity measures, but certainly as many of those offsets as possible.

The Chair (Mr. David Oraziotti): Thank you. Mr. Yakabuski, go ahead.

Mr. John Yakabuski: Thank you very much, Ms. DeMarco. You've actually lent some clarity to this, unlike the deputy minister, who did a whole bunch of statistical stuff. I presume he was trying to justify his salary in a public forum, and I'm sure the hospital will thank him for that. But I do appreciate you coming in and, as I said, allowing us to see this a little more clearly.

Prior to the tabling of this legislation—obviously the groups you represent have a significant interest—were you part of any discussions with the Ministry of the Environment, and do you share the views of Union Gas and Imperial Oil with respect to a carbon tax being more equitable than cap and trade? Or do you believe that cap and trade is the way to go if it is worked properly?

1630

Ms. Elisabeth DeMarco: In relation to the first part of the question, there were numerous opportunities to comment. In fact, I have to congratulate the Ministry of the Environment for its most recent discussion paper, which was very thorough—more thorough than we've seen in other jurisdictions.

First, there was a December 2008 discussion paper. There were consultations prior to that leading into the spring of 2009. There was a June 2009 detailed discussion paper. There were consultations leading up to that, and then there was an industry-sector-wide, sectoral approach benchmarking consultation, an electricity sector consultation, as well as a subsequent initiative that is forthcoming on verification and monitoring. Personally, I don't think that we can credibly criticize the ministry in terms of consultation.

In terms of tax or cap and trade, I think the group has regularly seen cap and trade as the predominant measure

that the province and other jurisdictions are going forward with, most notably our major trade partner. So in that regard, I think they have taken a pragmatic approach and put their horses and courses where the bulk of the regulatory agenda has been in North America.

Mr. John Yakabuski: We also need to mesh our legislation, then, with those other jurisdictions.

Ms. Elisabeth DeMarco: I think absolutely that's a key point. Harmonization would be our first main point and we want to look very carefully at assuring that we have harmonized approaches that don't submit the regulated emitter to three or four conflicting approaches.

Mr. John Yakabuski: You illustrated that very clearly with the Ontario-Quebec scenario with respect to power sales, which clearly could materialize under two separate and distinct systems.

Ms. Elisabeth DeMarco: If they're not harmonized, absolutely.

Mr. John Yakabuski: Thank you very much.

The Chair (Mr. David Orazietti): Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Thank you for making the presentation today. You've got a lot of detail in here and I think I may have missed something. My understanding of carbon pricing is to drive up the base of carbon-priced carbon burning. So I understand part of the function of this cap and trade is to make it more expensive for everyone who burns hydrocarbons or gas to produce electricity. Maybe I misunderstand you, but you seem to be arguing that you shouldn't have to bear that burden, that you want it passed through. Can you clarify this?

Ms. Elisabeth DeMarco: I think the key to cap and trade is that we want to achieve the most emission reductions at the least possible cost. We don't want necessarily to have a high carbon price for the sake of a high carbon price. We want to keep our eye on the ball. This is, in fact, consistent with the Sierra defence approach in the States: eye on the ball on emission reductions and achieving the most emission reductions for the least possible cost.

If we do it backwards and focus on the highest carbon price, I don't think we're likely to achieve the ends in light of the overall economic picture. The cap and trade submissions—in effect, the CARES submissions are very focused on achieving the most emission reductions at the least price.

Mr. Peter Tabuns: So you don't think we should drive up the cost of burning carbon in order to make renewables more competitive?

Ms. Elisabeth DeMarco: I think renewables in and of themselves will continue to become more competitive as a result that they don't have carbon as an input cost. So certainly this is focused on putting a price on carbon but through a mechanism that achieves emission reductions through the lowest overall system-wide cost. So it's an efficiency. It's effectively energy productivity.

Mr. Peter Tabuns: Okay.

The Chair (Mr. David Orazietti): Thank you very much. That's the time for the first presentation. Thank you for that.

BLUE-ZONE TECHNOLOGIES LTD.

The Chair (Mr. David Orazietti): If you want to move to your next presentation, you can go ahead and start with that.

Ms. Elisabeth DeMarco: Thank you. I won't introduce myself again. I'll apologize for the monotony of the same person at the seat two times in a row at 4:30 in the afternoon.

Mr. John Yakabuski: We're just going to be looking for the differences in the submission.

Ms. Elisabeth DeMarco: Good, because you'll see they're quite different.

Mr. John Yakabuski: This one is thicker.

Ms. Elisabeth DeMarco: This is actually supported by significant data. These submissions are on behalf of Blue-Zone Technologies Ltd. I'm proud to be here on behalf of Blue-Zone, which is an Ontario company that has developed the technology to capture, isolate and purify to medical standards very potent greenhouse gases in the form of hydrofluorinated ethers, or HFEs. These anaesthetic gases would otherwise be vented out of every single one of Ontario's hospital operating rooms absent the technology, which currently has received two worldwide patents and is achieving further patent protection technology.

There are three main submissions that Blue-Zone would like to make to you today. They're really centred around one central challenge associated with the bill in its current form, and that problem is that the bill limits the scope of the greenhouses gases covered to the six main greenhouses gases. It doesn't allow for expansion to other greenhouse gases as we see in other jurisdictions such as the US and/or BC, and/or it doesn't specifically include hydrofluorinated ethers as we see in other international approaches, such as the EPA reporting rule and in the IPCC. Both of those cover hydrofluorinated ethers.

The three basic submissions of Blue-Zone would be to look carefully at capturing all of our greenhouse gases that we can in a cost-efficient manner and to do so by expanding the definition of "greenhouse gas" in the bill to include specifically anaesthetic gases in a manner that's entirely consistent with US and international approaches.

The submission is thicker because it has included at the back all of the other standards that do in fact include hydrofluorinated ethers in their greenhouse gas regulatory spectrums. They would include, specifically: the Intergovernmental Panel on Climate Change; the US EPA, through its proposed mandatory reporting of greenhouse gases rule; the American Clean Energy and Security Act, a bill that's through the House in the US, which has certainly gotten permission to expand the scope of greenhouse gases; and most recently, the BC approach, again, allows for additional greenhouse gases to be designated by the government should they so require or warrant designation.

In that regard, we would ask that the government include hydrofluorinated ethers and specifically anaes-

thetic gases in the definition of “greenhouse gas” in the bill or, in the alternative and at a minimum, allow for additional greenhouse gases to be designated by regulation. That way, you don’t have to go through a legislative amendment to achieve the same goals as we evolve and are more aware of specifically what greenhouse gases are contributing to the problem. It’s a very small fix and quite doable.

Secondly, in relation to the greenhouse gases associated with anaesthetic gas, there are a series of global warming potentials that show just how much of a potent greenhouse gas they are. We’ve put the leading global warming potentials, the actual potency factors, into the submission for your consideration should you choose to include them in the bill as a covered greenhouse gas. Just to put the numbers in perspective, while one tonne of CO₂ has a global warming potential of one, and a tonne of methane has a global warming potential of 21, the anaesthetic gas isoflurane has a global warming potential of 350; the anaesthetic gas desflurane has a global warming potential of 1,341; and the anaesthetic gas sevoflurane has a global warming potential of 575, so those are very, very potent greenhouse gases. Those are all independently submitted and supported global warming potentials.

Finally, Blue-Zone would submit that there is a strong health and economic reason to support the inclusion of the Blue-Zone technology, and specifically hydrofluorinated ethers in the scope of greenhouse gases. This is an Ontario success story. This is a home-grown company, located in Brampton, that has developed worldwide proprietary technology, has worldwide patents and now has the ability to launch that technology to the world. This is Ontario clean tech at its best. It’s not only Ontario clean tech at its best, it’s Ontario health care efficiency. In these times of the critical nature of health care spending, we need all the efficiencies in that sector that we can get. Specifically, this allows hospital operating rooms to capture and recycle their anaesthetics at effectively no cost. While they would be purchasing anaesthetics every day, every week at a very significant expense, now, through the technology, they can reuse a single anaesthetic purchase 21 times before it has expired—a significant health care savings.

In that regard, Blue-Zone would like to strongly encourage you to use the cap-and-trade system to facilitate the development of this form of Ontario clean technology and at least, at a minimum, provide for expansion of the bill to include hydrofluorinated ethers in the longer term.

Those are our submissions, and we’re open for questions.

1640

The Chair (Mr. David Orazietti): Okay, thank you very much. We will start with the Conservative caucus. Go ahead, Mr. Barrett. Do you have questions?

Mr. Toby Barrett: Yes. Thank you, Chair, and thank you for this presentation. The House of Representatives, their Clean Energy Act does not list these products. I know there were amendments made. There was one

amendment. I haven’t read the act, but I read the 300-page amendment that came forward, in contrast to this piece of legislation, which is, if you subtract the English or the French, about a page and a half. I know the one south of the border is, gosh, 1,500 or 1,700 pages—I just forget.

They don’t list these gases. There are some gases that they list that Ontario doesn’t list. I’m just wondering what is going on here. I understand nitrogen trifluoride is not listed in the House of Representatives’ legislation.

Water vapour contributes to warming. That’s not listed as a gas. Ozone is not listed in this legislation. Chlorofluorocarbon is not listed. Have you done work on those products as well?

Ms. Elisabeth DeMarco: I have, and I know the bill, all 1,598 pages of it, quite well, unfortunately. There is a designation section, and they’re actually broken down. A number of the classes, for example, of PFCs and HFCs are broken down into their subcomponent parts. They’re supported by a subsection that allows for specific designation of further gases in the US. They’re also supported by the EPA reporting rule, which does specifically include these gases. And you’ve actually got the section of the EPA reporting rule in the back of the submission.

Mr. Toby Barrett: So does that model work for this legislation, or should we list these other products, if they do contribute to this direction?

Ms. Elisabeth DeMarco: Blue-Zone’s preference would be to include them outright, but in the alternative, to provide for a designation provision so that, at least, going forward you don’t have to go through a legislative amendment to actually get them included; you can merely pass a regulation.

Mr. Toby Barrett: That’s what we do, right around the table. It doesn’t take very long to vote on an amendment. I’m just wondering why a certain gas would be included in the legislation or included in regulation. Why would there be that distinction? Is one felt to be more significant than the other? Why would there be that distinction?

Ms. Elisabeth DeMarco: It’s just in terms of ease of process that we make the alternative submission. So in the first instance, Blue-Zone’s strong preference would be to have them specifically included in the definition of greenhouse gases. In the alternative, a designation provision seems to be the most expedient and efficient way to proceed—in the alternative.

The Chair (Mr. David Orazietti): Okay, thank you. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Thank you for the second presentation. What sort of volumes are we talking about, in terms of tonnes, kilotonnes or megatonnes of CO₂ equivalent?

Ms. Elisabeth DeMarco: It’s about 650,000 tonnes per year in Canada alone. We actually have the worldwide figures. I can take that under advisement and get back to you. It’s very, very significant, worldwide.

Mr. Peter Tabuns: The 650,000 is enough to catch my attention.

Ms. Elisabeth DeMarco: That's right.

Mr. Peter Tabuns: Okay. If in fact this mechanism allows hospitals to recapture and reuse anaesthetic gases, they're going to save a lot of money. Why do you need this as well? I have no opposition to what you're saying; it makes sense to me. But why do you need it on top of the substantial cost savings that hospitals should already have?

Ms. Elisabeth DeMarco: It's certainly an additional efficiency measure, so the key is to ensure that you're not just regulating from one point but that you're actually seeing the holistic benefits—this has great greenhouse gas reduction potential as well. So it's really harnessing the additional economic efficiencies for the province for home-grown technology in creating a precedent, either through regulation or through some other form of actually getting at these initial reductions.

Mr. Peter Tabuns: In previous discussions with the government, what has it said to you about your recommendations?

Ms. Elisabeth DeMarco: I think the government has been notionally very receptive. I think there are some concerns about getting out ahead of other jurisdictions, to be fair, and that's my understanding of where the difficulties lie, in terms of inclusion at this point.

Mr. Peter Tabuns: Okay. Thank you.

The Chair (Mr. David Oraziatti): Thank you, Mr. Tabuns. Ms. Jaczek?

Ms. Helena Jaczek: Really, more of a comment: I think it does get back to the issue of harmonization and consistency across jurisdictions, but it's a very interesting point, and like what Mr. Tabuns had to say, you would think that hospitals would be leaping on this bandwagon anyway. Thank you very much for bringing it forward.

The Chair (Mr. David Oraziatti): Thank you very much. I appreciate your coming in today, and I appreciate your presentations.

Ms. Elisabeth DeMarco: Thank you very much for having me.

The Chair (Mr. David Oraziatti): For the purposes of committee, we will not be meeting on Wednesday; all the presentations have been accommodated for. As well, for administrative purposes, so you are aware, amendments need to be filed with the clerk by noon on Thursday, November 12—constituency week—by noon next week. The committee will meet for the purpose of clause-by-clause on Wednesday, November 18, at 4 o'clock.

The committee is adjourned. Thank you.

The committee adjourned at 1647.

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziatti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. Reza Moridi (Richmond Hill L)

Mr. David Oraziatti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Bas Balkissoon (Scarborough–Rouge River L)

Mr. Toby Barrett (Haldimand–Norfolk PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. James Charlton, legislative counsel

CONTENTS

Monday 2 November 2009

Subcommittee report.....	G-1141
Environmental Protection Amendment Act (Greenhouse Gas Emissions Trading), 2009, Bill 185, <i>Mr. Gerretsen</i> / Loi de 2009 modifiant la Loi sur la protection de l'environnement (échange de droits d'émission de gaz à effet de serre), projet de loi 185, <i>M. Gerretsen</i>	G-1141
Energy Probe	G-1141
Mr. Lawrence Solomon	
Climate Change Secretariat.....	G-1144
Mr. Hugh MacLeod; Mr. Jim Whitestone	
Cement Association of Canada.....	G-1146
Mr. Luc Robitaille; Mr. Gerald Kennedy	
Suncor Energy.....	G-1149
Mr. Mike Cassaday; Mr. Michael Kandravy	
Imperial Oil Ltd.	G-1152
Mr. Jim Hughes	
Registered Nurses' Association of Ontario	G-1154
Mr. Kim Jarvi	
Union Gas; Canadian Gas Association	G-1157
Mr. Mel Ydreos; Mr. David Sword	
Mr. Grant Church	G-1160
Clean and Reliable Energy Supply Consortium.....	G-1162
Ms. Elisabeth DeMarco	
Blue-Zone Technologies Ltd.	G-1164
Ms. Elisabeth DeMarco	



G-47

G-47

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 18 November 2009

Journal des débats (Hansard)

Mercredi 18 novembre 2009



Standing Committee on General Government

Environmental Protection
Amendment Act (Greenhouse
Gas Emissions Trading), 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant la Loi sur
la protection de l'environnement
(échange de droits d'émission
de gaz à effet de serre)

Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 18 November 2009

Mercredi 18 novembre 2009

*The committee met at 1621 in room 228.*ENVIRONMENTAL PROTECTION
AMENDMENT ACT (GREENHOUSE GAS
EMISSIONS TRADING), 2009LOI DE 2009 MODIFIANT LA LOI SUR
LA PROTECTION DE L'ENVIRONNEMENT
(ÉCHANGE DE DROITS D'ÉMISSION
DE GAZ À EFFET DE SERRE)

Consideration of Bill 185, An Act to amend the Environmental Protection Act with respect to greenhouse gas emissions trading and other economic and financial instruments and market-based approaches / Projet de loi 185, Loi modifiant la Loi sur la protection de l'environnement en ce qui concerne l'échange de droits d'émission de gaz à effet de serre ainsi que d'autres instruments économiques et financiers et approches axées sur le marché.

The Chair (Mr. David Oraziotti): Good afternoon, everyone, and welcome to the Standing Committee on General Government. Today we're considering clause-by-clause for Bill 185 and we're ready to begin. Ms. Jaczek?

Ms. Helena Jaczek: I would like to ask for unanimous consent of the committee to move government motion number 19 forward so that this motion can be moved by the Minister of the Environment, as it is what is considered a money motion.

The Chair (Mr. David Oraziotti): It's a request for unanimous consent to allow the minister to deal with the motion. Do we have unanimous consent?

Mr. Peter Tabuns: If we're going to have the motion at all, now is the time. I'm willing to have this debated, sure.

The Chair (Mr. David Oraziotti): Agreed? Agreed. Thank you.

We need a substitution slip for the minister.

Interjection.

The Chair (Mr. David Oraziotti): It's fine, you can sit there—wherever you're comfortable.

Hon. John Gerretsen: Thank you very much, Mr. Chair.

First of all, let me applaud and congratulate the members of the committee on all sides of the House for dealing with this very important issue and very important bill.

I move that subsection 2(2) of the bill be amended by adding the following subsections to section 176.1 of the Environmental Protection Act:

"Greenhouse gas reduction account

"(6) Any amount paid to the Minister of Finance from the distribution of instruments under the regulations made under clause (4)(a) shall be deposited in a separate account in the consolidated revenue fund to be known in English as the greenhouse gas reduction account and in French as compte de réduction des gaz à effet de serre."

"Same

"(7) For the purpose of the Financial Administration Act, money deposited in the greenhouse gas reduction account shall be deemed to be money paid to Ontario for the special purpose described in subsection (8).

"Payments out of account

"(8) Money may be paid out of the greenhouse gas reduction account for the purpose of reimbursing the crown in right of Ontario for costs incurred by the crown in administering the regulations under this section that relate to greenhouse gases and in carrying out or supporting greenhouse gas reduction initiatives, particularly initiatives that relate to the sectors of the Ontario economy to which the regulations apply.

"Same

"(9) Without limiting the generality of subsection (8), money may be paid out of the account under that subsection with respect to the following costs:

"1. The costs of research into or the development or deployment of lower greenhouse gas emitting technologies in a sector of the Ontario economy to which the regulations under clause (4)(a) apply.

"2. The costs of programs to reduce greenhouse gas emissions in a sector of the Ontario economy to which the regulations under clause (4)(a) apply.

"3. The costs of infrastructure or equipment to reduce greenhouse gas emissions in a sector of the Ontario economy to which the regulations under clause (4)(a) apply.

"4. If the regulations made under clause (4)(a) apply to the electricity sector of the Ontario economy, costs of any greenhouse gas reduction initiative that would otherwise be borne by electricity consumers."

That's amendment 19 and, if appropriate, I would give an explanation of that at this stage.

The Chair (Mr. David Oraziotti): Go ahead.

Hon. John Gerretsen: This motion basically establishes a greenhouse gas reduction account for the

revenues from auctioned allowances and would provide the authority to pay the money out of that account to support greenhouse gas reduction initiatives, particularly those initiatives in the regulated sectors.

As many of you know, we have been seeking stakeholder comments on the design issues of cap and trade, including the use of the auction revenue as set out in our discussion paper that was posted on the EBR from May 27 to July 27 of this year. As a result of our consultations and upon further analysis, we are putting forward this motion that basically would create a greenhouse gas reduction account to support the use of cap-and-trade auction revenues for greenhouse gas reduction purposes, particularly in the sectors covered under cap and trade. The revenues would be used to help industries invest in transformative technologies, programs and infrastructure to reduce greenhouse gas emissions, lower costs, and in so doing, new jobs will likely be created. It will also help our industry stay competitive in the North American and global trading market and invest in a greener and cleaner economy for the province.

These measures have a broad range of support and are consistent with what we've heard from presenters to the standing committee during the debate, as well as the consultations that took place as a result of the EBR posting and well before that as well. Let me just give you some examples of this. It's my understanding that the member from Toronto-Danforth, upon second reading debate, stated, "There needs to be money coming out of this bill to help companies make the transition from being a big polluter to a green energy user. That will save jobs. That will stabilize our economy." That's the exact purpose of this amendment.

1630

In the standing committee as well, I understand that there have been a number of presentations, such as the one, for example, by the Clean and Reliable Energy Supply Consortium. Amongst other things, it stated to the standing committee that "CARES submits that the proceeds of auction revenue should be used for purposes as close as possible to the activities that the revenues come from. So we want to see reinvestment in those key sectors and true change in the province associated with reinvesting in cleaner and better technology in each of those submissions."

Another statement that was made by Suncor Energy was that "they could partly be diverted into developing truly transformative technologies.... There have to be some new solutions out there, and without technology investment we're not going to find them."

Finally, Union Gas as well made the statement that "if there were proceeds put into a fund, there are certain initiatives you can take with aggressive conservation and demand-side management to help industries reduce their greenhouse gas emission profiles and better technology in that regard."

The Cement Association of Canada also stated in their presentation to this committee that the Ontario cement manufacturers believe strongly that any revenues arising from the auction or otherwise distribution of allowances

must be recycled into the development and deployment of new technologies capable of further reducing greenhouse gas emissions within the sectors covered by the cap-and-trade system.

Also, I understand that there was a statement made by Environmental Defence and the United Steelworkers—the Blue Green alliance group—which basically stated that "allowances should be auctioned and used for public benefit. Revenues and allowances should be invested in job creation, minimizing leakage due to international competition, upgrading technology in vital industries, revitalizing research and development, investing in clean energy, building public transit, and supporting equity programs that help transition workers and vulnerable communities." We agree with all of these comments, and that's why we're making this amendment.

It will also address goals that are put forward in some of the other motions that are contained in the motion package that you have here today to support investments in new technology and cleaner energy sources to reduce greenhouse gases. For example, motion number 17, which I believe is being put forward by the NDP, speaks to using the auction revenues generated to support transition away from fossil fuels and to support job transition and assistance to those who have been impacted by climate change. That's precisely the purpose of this amendment. Also, there's a PC motion, which is number 18, which looks to establish a fund to support technological innovation and development.

Those are the main reasons why we're putting this forward at this stage. We feel that, again, we're basically dealing here with a bill that is an implementation document. How much of the allowances will be auctioned off or what the auctioned revenue will be remain to be seen. The main purpose of the amendment is to make sure that whatever money is raised through auctioning of the allowances basically goes into a fund which could help, in many different ways, to offset the greenhouse gas emission effects that we're fighting in this bill.

The Chair (Mr. David Oraziatti): Thank you very much for that. Further debate or further comment on the amendment? Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Minister, could you clarify point four at the end of the motion: "If the regulations ... apply to the electricity sector of the Ontario economy...." Is there any reason that they would not apply to the electricity sector?

Hon. John Gerretsen: I can't think of a reason right now as to why it would not apply to the electricity sector at this stage.

Mr. Peter Tabuns: So, just for clarity, then, is there a reason we would use the word "if" as opposed to saying that this resolution would lead to the allocation of funds to reduce impact on electricity consumers?

Hon. John Gerretsen: I wonder if I could just take a moment to confer with my officials here.

Mr. Peter Tabuns: I'd be happy to have you confer.

The Chair (Mr. David Oraziatti): Minister, if any of the staff want to come forward and make comments here, they can do that.

Hon. John Gerretsen: Have a seat, Heather. It's a very friendly committee.

The Chair (Mr. David Oraziotti): Just state your name for the recording purposes of Hansard and you can go ahead.

Ms. Heather Pearson: Heather Pearson. The "if" refers to whether they would come under the cap-and-trade program.

Mr. Peter Tabuns: Are you seriously contemplating not having them come under the cap-and-trade program?

Ms. Heather Pearson: Again, what's most important to us is to align with what's happening with other jurisdictions, so there may be a timing issue.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Peter Tabuns: So if I understand what you're saying, if the Americans or the Albertans don't bring their electricity system under their cap and trade, or any other member of, say, the Western Climate Initiative, we wouldn't bring our coal and natural gas plants under cap and trade.

Ms. Heather Pearson: I don't think a decision in that regard has been taken. The "if" refers to it being a covered sector, and the decision would have to be made as to which covered sectors fall under the cap-and-trade regulation—

Hon. John Gerretsen: Let me just address that, though. What we've heard loudly and clearly from the sectors that are mainly involved in this cap-and-trade system—the nine major sectors, including the electricity sector—is that they feel that for competitive reasons it's absolutely imperative that a continent-wide or a Canadian-wide system be implemented—preferably a continent-wide one, but certainly a Canadian-wide system. To be quite honest with you, we don't want to tie the electricity sector down if, for whatever reason, other sectors are excluded from that. It is certainly not our intent at this point in time to exclude the electricity sector, but we want to be in sync with the rest of North America.

Mr. Peter Tabuns: Okay. I think you've made it clear.

The Chair (Mr. David Oraziotti): Further comments? Mr. Barrett?

Mr. Toby Barrett: Maybe just to follow up on that question with respect to this fund: We use the term "technology fund," and to what extent it does apply to the electricity sector—I certainly hear what you say about how important it is to align with other jurisdictions, at minimum on this continent but certainly around the world. But we do have other legislation on this continent—both the House of Representatives and also the Senate bill, and I think there's now a revamped Senate bill that's probably going to sit for a few months and come forward. I have not read all of that legislation but I understand that one area that it does focus on is the electrical generation sector. It makes specific reference to the coal industry. President Obama, as we know, talks about clean coal and makes specific reference to carbon

capture and storage. We know that some of our coal clients are trying to accommodate this government not only by shutting down units but also by exploring biomass, for example. So whether it be a technology fund or a greenhouse gas reduction account, would money be made available for those kinds of purposes?

Hon. John Gerretsen: Well, that's exactly what the purpose of the amendment is. The purpose of the amendment is to make sure that whatever funding is being raised from allowances—whether you start allowances right from the very first unit that's being emitted, which has been suggested by some, or whether you start the allowances with, let's say, the last 15% of the emission levels—whatever funding is being collected should not go into the general revenues of government but should go into a special purpose account to deal with environmental issues in a broad way, whether it's through improving the technology and all of the other reasons that are set out in the section, to make sure that that money flows back into it.

1640

We heard that loudly and clearly from the sectors that we've had these discussions with for almost a year now, that they wanted to make sure that there weren't that many arguments against the technology fund, because they realized that it was a coming thing, but they wanted to make sure that whatever funds were being raised were going to go back into new technology, new programming. In the case of electricity, it could go back to the consumers in one way or another as well.

Now, it's not just going to be an in-and-out fund, because then, of course, the fund wouldn't serve any purpose at all. If it was simply X number of dollars going in and X number of dollars going back again to that same firm, you wouldn't accomplish anything. But it's to give greater assurances to the general public, to the industries involved and to Ontarians as a whole that whatever money is being raised through the sale of allowances, the auctioning off of allowances, that that money is going to be used in order to reduce greenhouse gas emissions.

Of course, with respect to the coal-fired energy, it is still fully our intent to comply with the existing law of the province of Ontario, to fully phase out coal by 2014. It's my understanding, having been briefed on this a number of times, that that's certainly not only a possibility but a great likelihood. We're certainly aiming towards that ultimate goal, and it's our purpose to do that. So I'll just leave it at that.

Mr. Toby Barrett: So under the section here, "Payments out of account," payments going back out again, that could well be in the form of interest-free loans, perhaps grants, subsidies, beyond what stays in the account, which I guess stays with the crown. So companies that have found the flexibility to, in the end goal, reduce greenhouse gas emissions can pay for that technology through a variety of those kinds of measures?

Hon. John Gerretsen: There are a number of ways in which those companies can be assisted. The main goal is to reduce their greenhouse gas emission levels. It's

certainly not intended to be an in-and-out situation—in other words, they pay X number of dollars in and they get X number of dollars out.

Mr. Toby Barrett: One other question, perhaps, for the clerk—we know there are two amendments somewhat similar to this. What is the process here? I see we've jumped to page 19. Do we go back to page—

The Chair (Mr. David Oraziatti): We'd go back to the first amendment after we vote on this, in section 1. We can vote on this amendment now and then we'd go back and we could begin—

Mr. Toby Barrett: So this amendment, by the nature of the way it's written, eliminates those other two amendments? I'm still not clear on why we jumped to page 19.

The Chair (Mr. David Oraziatti): No, it doesn't. That was because unanimous consent was asked for, and it was granted, for the minister to come forward so we could deal with this. Then we'd go back and go through all of the other amendments that have been put forward.

Mr. Toby Barrett: We don't go back to pages 17 and 18, which is made reference to here? We'd go back to page 1?

The Chair (Mr. David Oraziatti): We'd go back to the first one, unless you requested unanimous consent to move to a different one, as was done in—

Interjection.

Hon. John Gerretsen: My reading of motions 17 and 18 is that it's our view that they are more limiting in nature. They accomplish some of the same things, but I believe that the motion that the government has drafted here and that I'm presenting here is of a wider application, so that it could be used for larger purposes than what's set out in 17 and 18.

The Chair (Mr. David Oraziatti): Any further comment on 19? Seeing none, all those in favour of government motion number 19? Opposed? The motion is carried.

We're going to return to section 1, Conservative motion 1. If you want to go ahead, Mr. Barrett, you can read that.

Mr. Toby Barrett: I move that the definition of "greenhouse gas" in subsection 1(1) of the Environmental Protection Act, as set out in section 1 of the bill, be amended by striking out the portion before clause (a) and substituting the following:

"'greenhouse gas' means a gas that contributes to the greenhouse effect by absorbing infrared radiation, including,"

By way of explanation, I can understand that perhaps there's an assumption—and I know that the title of this bill, or part of the title, is "greenhouse gas emissions." We know that this concept has been around since the 1950s; I have a Globe and Mail article that talks about the greenhouse effect that was published in either 1951 or 1953. However, I think it's dangerous to make assumptions that people understand just what is meant in this legislation by the term "greenhouse gas," because in this legislation there's no explanation or definition of what

that term means. I know there's a list—or I should say a partial list—of a number of gaseous compounds, but there's nothing here that tells us just what this legislation's referring to when it uses the term "greenhouse gas."

The Chair (Mr. David Oraziatti): Any further comment on this amendment? Ms. Jaczek, go ahead.

Ms. Helena Jaczek: We certainly would concur that, as we heard from many stakeholders and as we've seen on the Environmental Registry, there's a desire to expand the definition of "greenhouse gas," so we see this motion as perhaps an attempt to do that. But in our view, by specifically referencing "absorbing infrared radiation," you're actually giving a very narrow definition related to a particular compound. That's why we have government motion 3, which in our view gives us some flexibility.

As the minister alluded to, as we go forward with new science, there will be a need, no doubt, to expand the list of greenhouse gases by regulation. We certainly heard that from our stakeholders. There were a number of different suggestions as to what might be included in this extended list, but it's our view that this is best addressed by our motion number 3.

Also, I'm a little bit intrigued, in terms of the precise wording of PC motion 1, that there's reference to "absorbing infrared radiation." Apparently the Intergovernmental Panel on Climate Change has done a lot of work, and they're trying to obviously continue to define greenhouse gases. They do have some wording that does reference infrared radiation, but they also include emissions, not just the absorbing of infrared radiation. So I think this sort of goes to illustrate that when you try to specify within a bill itself this degree of specificity, it's going to be extremely difficult to move forward and ensure that we are consistent with the proposals that will be coming out of the US. We would not want to, of course, disadvantage any of our businesses in terms of border measures that the US may be considering.

So we feel, essentially, that we need some flexibility and that our motion provides that.

Mr. Toby Barrett: You make reference to what's coming out of the US, and there are two very large pieces of legislation now. I have not gone through them—I know the HR bill is well over 1,000 pages. But are you suggesting that they do have the definition in that legislation?

1650

Ms. Helena Jaczek: I'm not aware of that. It's the Intergovernmental Panel on Climate Change that is sponsored by the United Nations, and they're working on this.

But as it relates specifically to infrared radiation, apparently they're not concerned just about absorbing but also emitting. It's just an example of how, when you get into very specific wording, your efforts may be sort of hamstrung, in a sense, if you try to put specific wording into legislation, as opposed to, as time goes on, adding regulations.

Mr. Toby Barrett: Yes. We won't get to debate that, which is of concern. I do know this has come up recently,

actually, with another piece of environmental legislation, the Toxics Reduction Act, which, it has turned out now in regulation, is being applied to certain food products, which was never discussed or indicated in the legislation. That's one concern: leaving it up to those people who write regulation. They decide what the definition is.

I hear what you're saying about maybe backtracking, and perhaps this Ontario government did get out in front of the pack when this legislation was first introduced. I'm surprised to hear that we are waiting for the US legislation, if they don't have a definition, and I'm surprised, after all this work, that the UN body doesn't have a definition. That really makes it very difficult to make decisions, if we're not even sure what we're talking about here. As I say, this term has been around since the early 1950s. I'll leave it at that.

The Chair (Mr. David Orazietti): Any further comments on this motion?

Ms. Helena Jacek: I'd just like to reassure Mr. Barrett that, going forward, we will continue to consult with stakeholders as we look at expanding the list of greenhouse gases.

The Chair (Mr. David Orazietti): Further debate? All those in favour of motion number 1? Opposed? The motion is lost.

Mr. Barrett, the next motion is yours as well: Conservative motion number 2. Do you want to go ahead?

Mr. Toby Barrett: Yes. PC motion on page 2, still on section 1 of the bill.

I move that the definition of "greenhouse gas" in subsection 1(1) of the Environmental Protection Act, as set out in section 1 of the bill, be amended by striking out "or" at the end of clause (e), by adding "or" at the end of clause (f) and by adding the following clauses:

"(g) nitrogen trifluoride,

"(h) water vapour,

"(i) ozone,

"(j) chlorofluorocarbon, or

"(k) hydrofluorinated ethers, including desflurane, sevoflurane and isoflurane;"

This amendment obviously adds several other chemicals or products defined as emissions. Some of this is included in House of Representatives Bill 2454 and I'm assuming is included in Senate Bill 1733.

The latter three products, the hydrofluorinated ethers: As I recall, we had a deputation before this committee requesting that those three products be included in that definition of what is to be regulated.

The Chair (Mr. David Orazietti): Any further comments? Ms. Jacek, go ahead.

Ms. Helena Jacek: Well, similarly, although we understand the good intentions of expanding the list at this time, and we did hear a specific deputant recommend the inclusion of some anaesthetic gases, again we would say that at this point in time we would not see the appropriateness of being so specific within Bill 185. We have included the six Kyoto gases. The legislation in the Senate certainly has not passed the Senate. At this point, we feel this definition is too limiting and we prefer to

move our amendment 3 as being the appropriate way of dealing with the ongoing science as climate change evolves. So again, we would prefer to introduce substances through regulation, that being a more efficient and effective approach.

The Chair (Mr. David Orazietti): Any further comments? Seeing none, all those in favour? Opposed? The motion's lost.

Government motion 3: Ms. Jacek, go ahead.

Ms. Helena Jacek: I move that the definition of "greenhouse gas" in subsection 1(1) of the Environmental Protection Act, as set out in section 1 of the bill, be amended by striking out "or" at the end of clause (e), by adding "or" at the end of clause (f), and by adding the following clause:

"(g) any other contaminant prescribed as a greenhouse gas by the regulations;"

As we've already discussed, this motion would expand the definition of greenhouse gases beyond the six Kyoto gases listed in Bill 185 to include any other. We certainly did hear from a number of stakeholders and through public hearings, all the consultation that has been going on over the last year and also on the Environmental Registry that they would like the definition of greenhouse gases expanded.

We recognize that additional greenhouse gases are under consideration in the US and could continue to be identified over time as the science on climate change evolves. What we're proposing is a motion that will allow us the flexibility to identify in regulation additional greenhouse gases, ensuring that we can adapt to cap-and-trade developments in the US and over time.

The Chair (Mr. David Orazietti): Any further comment? Mr. Barrett.

Mr. Toby Barrett: I guess, again, I am concerned that we would defer this, trying to pin down this list or definitions of what's on the list. We're told the science is there; we're told that this is a known entity and that we should be moving forward. We've been told this for decades, actually, so I just question why we wait for regulation when we know there is other legislation in other jurisdictions that has pinned this down.

I'm concerned too: Given the few people who came forward to testify, I'm just not sure whether those impacted really have a full understanding of what is going on here. I think since this legislation was introduced by the minister, I've seen maybe one or two newspaper articles about it—very, very little. There does not seem to be any government communications program or any effort to disseminate information, at minimum, to the general public. I would feel that those affected would want some assurances. At least, if they could better understand what this legislation is referring to when it talks about greenhouse gases and the several products that are listed in the bill. I just think that's very important before this basically leaves the Legislature and goes forward at some point for somebody, somewhere to write it up as a regulation. I'm sure they'll do a good job and talk to people, but they won't be talking to members of

this Legislature unless another amendment that I have proposed further in this process, where, when we do get to that stage of regulation, I'm requesting that those of us involved get to hear about it and the public gets to hear about it before these regulations get carved in stone.

1700

The Chair (Mr. David Oraziotti): Thank you, Mr. Barrett. Further comments, Ms. Jaczek?

Ms. Helena Jaczek: I would just like to point out that both US bills do also have this type of flexibility proposed in their legislation. In other words, they are also saying that they wish to have the opportunity to add greenhouse gases over time. So again, we're trying to be consistent. We think this is the best way of ensuring that we don't subject any of our Canadian industry to some disadvantage as compared to the US.

The Chair (Mr. David Oraziotti): Thank you. Any further comments?

Mr. Toby Barrett: The third Senate bill, apparently that's substituted, so it may be February before that is discussed.

The Chair (Mr. David Oraziotti): Fair enough. Okay. All those in favour of government motion 3? Opposed? The motion is carried.

That's all of the amendments in section 1. Shall section 1, as amended, carry? Carried.

Section 2, Conservative motion number 4. Go ahead, Mr. Barrett.

Mr. Toby Barrett: I move that subsection 2(1) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Definition: emissions trading

"(1.1) In this section,

"‘emissions trading’ means a tradable-permit system in which a person who emits a contaminant can buy from other persons, or sell to other persons, permission to emit a certain amount of the contaminant, where the market price of this permission reflects the marginal cost of emission reduction and gives a person who emits the contaminant the incentive to install and manage a cost-effective contaminant control system as an income producing asset."

Again, given that this is what the bill is all about—cap and trade; we use the term "emissions trading" in the title if that title is approved—given the importance of the role of this term "emissions trading" and the importance it plays not only in the legislation but the impact that it may well have on the economy in the province of Ontario, I just think it's essential that we have an explanation, a definition describing exactly what we're talking about here. That's all I ask.

The Chair (Mr. David Oraziotti): Thank you, Mr. Barrett. Ms. Jaczek, go ahead.

Ms. Helena Jaczek: It's our view that this specific definition in the bill is unnecessary. The Environmental Protection Act already provides the authority for the use of economic and financial instruments and market-based approaches, including without being limited to emissions trading. So this authority has already been used to

establish the nitric oxide and sulphur dioxide emissions trading program. So we feel that this is not necessary and could, unintentionally perhaps, bring some consequences that would limit our ability to design a program that would work for Ontario and possibly limit our ability to link with the emerging emissions trading systems in North America.

We essentially want to ensure that this bill is worded in a way that is sufficiently broad to ensure that we are consistent with what does emerge in North America—again, to protect our businesses from potential border measures related to our exports to the United States. So we will not be supporting this motion.

The Chair (Mr. David Oraziotti): Any further comments? Okay, all those in favour? Those opposed? The motion is lost.

Conservative motion number 5. Mr. Barrett, go ahead.

Mr. Toby Barrett: I move that subsection 2(1) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Definition: financial instrument

"(1.2) In this section,

"‘financial instrument’ means a real or virtual document representing a legal agreement involving some sort of monetary value."

Again, as with emissions trading, the crafting of this legislation made a point of including "financial instruments" in the title. This tells you something, but I can find very little in the legislation that explains what we're talking about.

We do know that in both the Senate and House of Representatives bills, which seem to be the only legislation, really, that I can find—I think we all agree that it's very important to take a look at what is coming forward in the United States.

I know that both bills—I can't find them right now—go into a fair bit of discussion about derivatives. It's pretty complex stuff. They've done their work on that and I feel they have gone a long way in laying out just how these kinds of systems would work, so that everybody can understand how it's going to affect their state, their jurisdiction, their company, their book of business or their electricity bill perhaps. I just find nothing in here that tells me what's going on.

The Chair (Mr. David Oraziotti): Thank you. Mrs. Jaczek, go ahead.

Ms. Helena Jaczek: Well, again, we feel that this is too narrow a definition. It's a new definition. Neither of the two US bills that we've had the opportunity to study have a definition of "financial instrument." In fact, I'm sort of curious where this particular definition may have actually come from. It'd be interesting to be enlightened.

Mr. Toby Barrett: I'd like to hear how the government is defining these terms. I'll throw it out—

Ms. Helena Jaczek: It is our intention not to narrowly define within the document, because we wish to be consistent with what emerges from the US. Certainly, I'm informed that they were not able to find this type of

definition in any cap-and-trade legislation that has been proposed to date.

The Chair (Mr. David Oraziotti): Okay. Any further comments? All those in favour of motion number 5? Opposed? The motion is lost.

Mr. Barrett, number 6, go ahead.

Mr. Toby Barrett: Okay, and as you can appreciate, the PC motion on page 6 is of the same ilk if you take a look at the title of this bill.

I move that subsection 2(1) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

“Definition: market-based approach

“(1.3) In this section,

“‘market-based approach’ means an approach based on a method of arriving at the appraisal value of an asset, instrument or interest on the basis of the prices at which similar items are available or were sold within the last three to six months, making appropriate adjustments for differences in quality, quantity or size.”

Again, seeing no explanation or definition of what “market-based approach” in the title of this bill is referring to, for purposes of discussion I put forward a definition and would ask if a definition can be included in this legislation. The cap-and-trade approach, which is a good approach, has proven itself well with respect to acid rain, but it’s an approach that is market-based, or it’s an approach, I guess looking at it in another way, that’s an intrusion into the market by government. I think it’s very important, if we’re going to pass this kind of legislation—I know we’re waiting on the UN and we’re waiting on the Senate in the United States. Maybe we should not pass this legislation if we are not making any moves on these several issues that I’ve talked about in the last three motions until we find out what that final Senate bill is going to look like.

1710

The Chair (Mr. David Oraziotti): Ms. Jaczek?

Ms. Helena Jaczek: My comments will be very similar on this motion as well, that again it’s too restrictive. It’s something that we feel could potentially have some unintended consequences if this particular definition is not used in the US, as it seems to us that there is no contemplation of this kind of narrow definition. Ontario does already have an emissions trading system, and it hasn’t been found necessary to define it in this way. Again, we’re intrigued as to where this particular definition came from, why it was chosen. If it’s something that has emerged in other jurisdictions, obviously we would be interested.

Mr. Toby Barrett: It’s put forward for discussion and basically to make a point. You’ve made a point that we’re not ready to move forward until that UN committee and until the United States pins down what they’re doing. For that reason, I question why this legislation should be passed before the US legislation is passed. I’m agreeing with your reasoning on that.

The Chair (Mr. David Oraziotti): Any further comment? Ms. Jaczek, go ahead.

Ms. Helena Jaczek: To respond to that, Bill 185 is essentially enabling legislation. We want to be ready. It has taken a certain amount of time to come to this point and therefore we feel that having this in place will mean that we are ready to leap ahead with the type of greenhouse gas emission program that we know that North America, the world, the globe needs. That’s why this legislation is here.

The Chair (Mr. David Oraziotti): All those in favour of Conservative motion number 6? Those opposed? The motion is lost.

NDP motion number 7: Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I move that subsection 176.1(4) of the Environmental Protection Act, as set out in subsection 2(2) of the bill, be struck out and the following substituted:

“Same, greenhouse gases

“(4) A regulation under this section that relates to greenhouse gases,

“(a) shall, despite subclause (2)(b)(ii), provide for instruments created by the regulations under subclause (2)(b)(i) to be distributed only by auction and may govern the distribution of those instruments; and

“(b) may authorize a person or body to prescribe, govern or otherwise determine any matter that may be prescribed, governed or otherwise determined by the Lieutenant Governor in Council under this section.”

My argument is fairly straightforward. I look at the position taken by the David Suzuki Foundation and the Pembina Institute, who both make strong arguments against systems that give away emission permits and allowances. They argue that a 100% auction system means that you’re giving away allowances to emitters who may well not need them at all, leading to price crashes in the market. Certainly, the experience in the European Union with giving away a large number of free allowances to electricity producers led to windfall profits for those companies but didn’t advance the cause of reducing emissions at all. They argue that it’s better to make subsidies directly out of separate programs rather than make subsidies through giving away free emission allowances. Ultimately, if we’re going to raise the money that we need to raise to invest in renewable power, giving away free instruments undermines that goal, that program. So I would ask the government and the opposition to support my resolution so that we aren’t giving away emission credits.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: I understand Mr. Tabuns’ reasoning, and we would concur that ideally we would move to no free allowances. We feel, though, at this time, we’ve heard from industry at public hearings and through the consultations throughout this year that we need to link with the broader cap-and-trade systems. Neither the Waxman-Markey bill nor the Kerry-Boxer bill are saying “no free allowances.” They are identifying a mix of allocating allowances by auction and free of charge, at least in the initial years. It’s a situation where it is important to keep Ontario industries remaining competit-

ive in the North American and global trading markets. We've learned from the European experience.

I had the opportunity to hear the minister speak at a meeting of the Toronto Board of Trade, and this was raised, in terms of just exactly what you describe: wind-fall profits. So we need to be very mindful of that, but at this point in time we recommend that our existing subsection 176.1(4) be retained, as it does provide the possibility. I hope it won't be too long before we do move to the 100% auctioning that is recommended here.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Peter Tabuns: Briefly, just that if we actually are going to have competitive industry, we have to move them fairly rapidly off of fossil fuels. It's not just a question of climate change but a question of the long-term availability of fossil fuels. Giving away free permits doesn't advance that cause. I hear your argument; I disagree with it.

The Chair (Mr. David Oraziotti): Mr. Barrett, comment?

Mr. Toby Barrett: Yes. Just by way of comment—and someone may have more information—as far as auctions, I understand that the Regional Greenhouse Gas Initiative is by auction. That's one of the regional trading systems that's actually working. The Western Climate Initiative is still a gleam in someone's eye. That is based on auction. However, as I understand, it's limited to just electrical generators.

Interjection.

Mr. Toby Barrett: Yes. If we're going to be following the US lead—I think they talk about the market system somehow naturally going towards more of an auction system, but it starts out as an allocation system. Very briefly, could someone maybe make this distinction between—

Ms. Helena Jaczek: They're certainly ready to do so.

Mr. Toby Barrett: And the EU system as well?

Ms. Heather Pearson: You are correct: The Regional Greenhouse Gas Initiative in the northeastern United States is electricity-based, and it does try to auction 100% of the allowances. As already has been mentioned, the initiatives at the federal level in the US are looking at a mix of auctioning and free allowances, again to allow time for industry to adjust. In the EU, ETS is also striving to move towards 100% auctioning over time.

Mr. Toby Barrett: Another system that did work very well with respect to SO_x and NO_x is the acid rain trading system. I think the auction component of that is very small; is that correct?

Ms. Heather Pearson: I believe so, but I can't give the specifics of that and what it is in the US.

Mr. Toby Barrett: I know that there is a component in there for auction, but it's clearly not being used at all. But that acid rain trading system, I understand, still continues?

Ms. Heather Pearson: Yes, it does.

Mr. Toby Barrett: And it continues to be enhanced as other jurisdictions get drawn in or the bar has been raised over the years?

Ms. Heather Pearson: That's correct.

Mr. Toby Barrett: I think the auction component of that is maybe only 1.9% or something.

Ms. Heather Pearson: I'm sorry; I don't know the specific numbers.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Barrett, Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost. NDP motion 8: Go ahead, Mr. Tabuns.

Mr. Peter Tabuns: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Same

"(5) A regulation under this section that relates to greenhouse gases shall promote the goal of reducing Ontario's greenhouse gas emissions to 25% below 1990 levels by 2020."

1720

Very simply, if you follow what the United Nations Intergovernmental Panel on Climate Change talks about, if you're going to stabilize the climate at all, those are the target levels that you have to be aiming for. That should be reflected in this bill and should be reflected in the direction of government targeting.

The Chair (Mr. David Oraziotti): Any further comment? Ms. Jaczek, go ahead.

Ms. Helena Jaczek: Our position is that by including this kind of target within the legislation we would not be consistent with Ontario's climate change action plan. This is what we've laid out following a great deal of consultation. Our goal is that, by 2020, greenhouse gas reductions be 15% below 1990 levels. We feel that this is an aggressive target. We will be reporting annually to the Legislature on our progress, and the progress report is reviewed by the Environmental Commissioner. Our Bill 185 is essentially there to allow Ontario to design a cap-and-trade system, as I've said several times this afternoon, that can link up with other systems. So, through regulation, Ontario will set a limit on emissions from sectors covered under the program, and this will help us achieve our economy-wide greenhouse gas targets.

We have had some supportive quotes from various sources that feel that our targets are reasonable. The Environmental Commissioner has stated, "I am pleased with the efforts the government is making in charting a transparent course to ensure Ontario will reduce its greenhouse gas emissions." He goes on to say that he "agrees that the short-term (2014) greenhouse gas target is achievable." And, "The Environmental Commissioner of

Ontario also accepts the broad sector allocations that will contribute to achieving the 2014 greenhouse gas reductions.”

The David Suzuki Foundation has stated, “The targets for reducing greenhouse gas emissions are solid, particularly the long-term targets. They’re in line with what science dictates is required.”

So we feel that we’re building a sound plan and that this particular legislation is not the place to specify a particular target.

The Chair (Mr. David Oraziotti): Mr. Barrett, go ahead.

Mr. Toby Barrett: I certainly agree that targets are very important and targets should be included in this legislation, as they are included in both US pieces of legislation. The legislation specifically lays out the targets from 2012 right through to 2050. For example, the parliamentary assistant made mention of a 15% target for 2020. The US House of Representatives bill says that in 2020, US greenhouse gas emissions are not to exceed 80% of the 2005 greenhouse gas emissions. Unless that changes, is that going to be the Ontario target, if we are going to be following the US legislation?

Ms. Helena Jaczek: At this point in time, we are stating that our targets are those in Ontario’s climate change action plan.

Mr. Toby Barrett: In the amendment from the NDP, it states, “shall promote the goal” of this particular target. I think it’s important in legislation that, rather than promote a goal, it should set the goal by legislation. I think that’s a little polite to put it that way—a little wishy-washy. You’re either going to set a goal or you aren’t in legislation, and if it’s going to be there to promote a goal, which is a moving target—maybe you know more about this government than I do, but I just question that phraseology.

Mr. Peter Tabuns: I would say that through cap and trade alone, you’re not going to meet the target. It’s a component of a larger plan and is saying that this component of a larger plan should promote that goal. That’s the logic.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Barrett, Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost. Members, we have a few minutes to get over to the House for a vote. When we come back, I’d ask members to, as soon as the vote is over, come back to committee and we can get started. We’ll start with Conservative

motion number 9 when we return. The committee is in recess.

The committee recessed from 1723 to 1730.

The Chair (Mr. David Oraziotti): Okay, committee members, let’s pick up where we left off here. Conservative motion 9: Mr. Barrett, if you want to go ahead with that, you can.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

“Reports before regulation

“(5) A regulation under this section that relates to greenhouse gases shall not be made unless the Lieutenant Governor has obtained and made available to the public,

“(a) a report of an independent body on the total amount of greenhouse gases emitted annually in Ontario, including the annual amount of greenhouse gases emitted from products imported into Ontario; and

“(b) a report of an independent body on the costs of complying with the regulation to persons engaged in,

“(i) agriculture,

“(ii) manufacturing,

“(iii) steel production,

“(iv) electricity generation using coal or natural gas,

“(v) oil and natural gas exploration, and

“(vi) chemical production.”

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Toby Barrett: I put forward this amendment recognizing the importance of understanding the true impact of this legislation, not only on the environment—and, ideally, the change that this Ontario legislation will have on the global environment—but also, I guess more specifically to Ontario, the economic impact that this legislation would have on the cost of doing business, for example, with respect to agriculture or the benefit to agriculture of being part of—I use agriculture as an example—how there would be benefits not only for the environment, for greenhouse gas emissions, but also for the allocation of land, labour and capital within agribusiness, for example, and I use (b)(i) as an example with respect to agriculture. As we have found of note, and I know this legislation does deal with money and it deals with markets, finances, the economy and trading, even though it is an environmental bill, it’s very important to have written into this legislation requirements that somebody out there, at arm’s length in this case, is there to monitor, to evaluate, to audit and to report. I think it’s important to have those principles contained within the legislation.

The Chair (Mr. David Oraziotti): Ms. Jaczek, go ahead.

Ms. Helena Jaczek: In our view, this proposal would be incredibly costly, first of all. It seems to suggest that the government of Ontario would pay a third party to prepare two public reports: one that accounts for all greenhouse gas emissions generated in Ontario as well as those that are created through the production of all

products imported into Ontario, and a second that outlines the costs of compliance for certain sectors.

We view the threat of climate change as an urgent threat. We cannot really consider anything that would be an impediment to the government taking action—and that's the way we view this motion: as not only very costly but something that would slow us down.

Ontario does report. Our Go Green climate change action plan in 2007 included an assessment of the greenhouse gas emissions in the province. Progress is reported annually to the Legislature, and that report is reviewed by the Environmental Commissioner of Ontario. Statistics Canada does collect, analyze and publish this information on industrial greenhouse gas emissions to support Canada's national and international reporting obligations, so we feel we have a system that gives us fairly good information in this regard. We've also posted a draft greenhouse gas emissions reporting regulation on the Environmental Bill of Rights registry, and that specifically will require reporting for all regulated sources that are emitting 25,000 tonnes of carbon dioxide equivalent or more per year. But the motion as has been proposed here is something that we could not support.

The Chair (Mr. David Oraziotti): Any further comments? Motion number 9: All those in favour? Those opposed? The motion is lost.

Government motion, page 10. Ms. Jaczek, go ahead.

Ms. Helena Jaczek: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Same

"(5) Without limiting the generality of clause (4)(a), a regulation under that clause may,

"(a) prescribe objectives and other matters that must be considered in setting the percentages of instruments to be distributed by any of the means referred to in clause (4)(a);

"(b) prescribe objectives and other matters that must be considered in setting reserve bids for instruments distributed by auction or sale prices for instruments distributed by sale."

The Chair (Mr. David Oraziotti): Any further comments?

1740

Ms. Helena Jaczek: By way of explanation, this motion would expand the regulation-making authority under Bill 185 to prescribe parameters and constraints that must be considered with respect to the auctioning of allowances, to ensure that the design of the auction and the percentage of allowances auctioned do not generate excessive amounts of revenue beyond what is necessary for the regulatory purpose.

Auctioning is a key component of cap-and-trade systems developing in the US and around the world, and we know that it is essential to be open and transparent in the manner in which we design the potential auctioning regulations. As a result, this motion would allow the government to enshrine in regulation the objectives and requirements considered in developing auction rates and

other auction design elements. It will also ensure that future regulations are supported by sound analysis and information.

The Chair (Mr. David Oraziotti): Thank you. Any comments on this? Mr. Barrett.

Mr. Toby Barrett: I'm not sure if these objectives—does it actually require adherence to the objective or is it an objective that's been included in the legislation just for the reason of listing an objective? I'm not sure if it actually requires adherence.

Ms. Helena Jaczek: As I understand it, it's essentially a design feature in the way that the auctioning will occur, but we can certainly ask for additional clarification, should you require it.

Mr. Toby Barrett: No, I guess I'll just leave it at that.

The Chair (Mr. David Oraziotti): Okay. All those in favour of government motion 10? Those opposed? The motion's carried.

NDP motion 11: Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Same

"(6) A regulation under this section that relates to greenhouse gases shall not permit any person to create a financial instrument unless the regulations impose a limit on the amount of greenhouse gases the person may emit."

Just to be clear, having consulted legal counsel, that's the way it has to be drafted to say there won't be any offsets allowed in this bill.

I want to speak briefly about offsets. The David Suzuki Foundation and the Pembina Institute both recommend strongly that offsets not be part of this system; that they lead to difficulties in administering the system—it leads to gaming, it leads to loopholes; that in fact there have been substantial problems with the Kyoto Protocol's Clean Development Mechanism because they have tried to deal with the complexities and it has led to very high transaction costs, which have reduced the efficiency of the system as a whole. Beyond that, people should be aware that two of the leading audit companies that worked on the Clean Development Mechanism, Norway's DNV and SGS UK, have both run into substantial problems with the United Nations for failure to actually ensure that instruments that were for sale on the market were real instruments. That's a substantial problem.

The Washington Post just recently ran an article by two people who had worked as lawyers for the Environmental Protection Agency, who both made the argument that offsets—for instance, buying credits by giving someone money to keep a forest growing—could not guarantee in any way that there wouldn't be another piece of forest nearby that would never have been cut except for the fact that at one point, part was reserved and the log was just moved down the road. They also make the argument that the refrigerant HCFC-22, in its manufacture, creates an extremely powerful greenhouse gas as a by-product. The by-product is fairly cheap and

easy to destroy—and in fact, our governments could require that manufacturers do that—but investors in offsets have persuaded regulators to approve destruction of the by-product as a carbon offset, making it twice as profitable to sell the by-product destruction as it was to sell the refrigerant. So you get those kinds of distortions.

The other reality: A report that just came out recently by Greenpeace USA noted that the loopholes from offsets in the proposed Waxman-Markey bill would “effectively postpone the need to reduce US industrial emissions for close to two more decades.”

I would say that the arguments by fairly credible sources about the problems with offsets are substantial enough to say that if you feel that climate change is urgent, you will not provide for loopholes in this bill.

I also have to say that for Ontario to be competitive, it needs to have substantial action taken on greenhouse gas emissions.

I know the arguments made around the table today around competitiveness, and I would say that Canadian banks had difficulty competing with American banks because American banks had far less regulation and Canada had far more. But a year ago, we found out what it meant to have a far less regulated banking system. It means that you are on very thin ice. Canada benefited from the fact that it restrained its financial institutions in a way that protected people who had bank accounts, who had made investments in those banks.

I'd argue that the government should set aside the whole offset direction so that Ontario will make, as speedily as possible, a transition away from fossil fuels.

The Chair (Mr. David Orazietti): Further comment? Ms. Jaczek, go ahead.

Ms. Helena Jaczek: We did hear quite a bit about offsets during the hearings here. So has the ministry. We heard that offsets should be limited, small, with a number of constraints put on them.

The government has consulted widely on offset design because in fact offsets are an important component of the cap-and-trade programs currently under development at the federal and subnational levels in Canada and the US.

I'd like to again, hopefully, reassure Mr. Tabuns a little bit that we will continue to seek the views of recognized experts and the views of our major industrial stakeholders on the design of offsets. We have to ensure that they're credible and that there is a rigorous approach to ensuring that they're doing what they are supposed to be doing.

I understand where he's coming from in terms of not wanting to have any offsets at all, but we simply feel that at this point in time, we need to have the ability to have the creation of offsets within our cap-and-trade system.

The Chair (Mr. David Orazietti): Mr. Barrett, go ahead.

Mr. Toby Barrett: I'm just concerned because there's so little in this bill on how this actually would be working. I'm not too keen on this. I think it's important to have flexibility. There would be situations, perhaps, where we have a very long, hot summer, which is per-

haps one reason why this legislation is being considered. There has to be that kind of flexibility where, if an entity—it may be an electricity generator—goes over the limit, they pay the price. I think that's really the basis of a cap-and-trade system and the goals that are set. It's there to allow that to occur and to allow buying and selling without a command-and-control system. We could go back to a command-and-control system, perhaps, and forget about cap-and-trade, if we're going to be imposing limits.

The Chair (Mr. David Orazietti): Any further comments? Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I just want to say that if the goal of the government is to ensure that our legislation is aligned with that brought forward in the United States, then this bill and its regulations, when they ultimately come down, will allow a very high level of offsets, which will probably result in a very low level of transition away from fossil fuels—one.

1750

Two: If, in fact, you go ahead with a level of offsets comparable to the United States, this government—or whoever is in power when this bill in force—will have to face scandals like the way they've faced in Europe on offsets with companies that fudged the numbers, because this is an extraordinarily profitable sector.

Lastly, the offsets will not protect industry in Ontario from the growing volatility in energy costs, particularly for oil and gas. So I think that the government's decision to not go forward with a program that substantially reduces fossil fuel consumption is one that the government will regret.

The Chair (Mr. David Orazietti): Any further comments? Seeing none, all those in favour—

Mr. Peter Tabuns: Recorded, please.

The Chair (Mr. David Orazietti): A recorded vote has been called for on NDP motion number 11.

Ayes

Tabuns.

Nays

Barrett, Jaczek, Kular, Mangat, Moridi.

The Chair (Mr. David Orazietti): The motion is lost. Conservative motion number 12: Mr. Barrett, go ahead.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

“Cost of carbon

“(6) A regulation under this section that relates to greenhouse gases shall not be made unless it will ensure a uniform and predictable cost of carbon.”

I felt that this was a suggestion that came up at the witness table from Imperial Oil and from Union Gas to do what we can as a committee or as legislators to try to

work into this legislation something that would give them a little more confidence about what they're dealing with here, what the cost to their various industries would be, not only once the legislation is in place but once a trading system is in place.

We know that this page and a half of legislation is designed to create a carbon market in Ontario which would be relatively insignificant as far as impacting the globe but would have a considerable impact within the Ontario economy—an impact of billions of dollars every year involving all of these various financial instruments that are mentioned in the title but not explained. It involves derivatives and everything else that a commodity market includes. This legislation does not seem to focus on auditing, reporting, evaluating or oversight of that particular market. There is concern here that, with whatever formula is used, as far as auctions or allocating allowances, there has to be more information and a better structure so that, at minimum, people and organizations have a bit of an idea just where the price is going to go on carbon. I do know that in the US legislation they predicted what the price of carbon would be.

The Chair (Mr. David Oraziatti): Any further comments? Ms. Jaczek, go ahead.

Ms. Helena Jaczek: I guess I'm kind of surprised to see this motion from the PC Party basically calling for the government to set the price of carbon. We're committed to allowing the market to determine the price of carbon. We're not in favour of any system that is more akin to a carbon tax.

Again, we've heard from major industries through the hearings and consultations that it's critical that our system link to the broader cap-and-trade systems emerging across North America. In order to keep our industries competitive, any price caps could limit Ontario's ability to link with other trading systems, so we will not be supporting this motion.

Mr. Toby Barrett: We're not calling for a price cap; we'd just like to know—we need a guarantee of uniformity and predictability.

The Chair (Mr. David Oraziatti): Any further comments? Seeing none, Conservative motion 12: All those in favour? Opposed? The motion is lost.

NDP motion 13: Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

“Same

“(7) A regulation under this section that relates to greenhouse gases shall not permit any person to use a financial instrument to authorize emissions of greenhouse gases if the instrument was created by a person whose greenhouse gas emissions are not limited by the regulations or by the law of another jurisdiction.”

Essentially, not allowing emitters, polluters in Ontario to take advantage of what may well be fraudulent offsets in other jurisdictions or allowing them to say to Ontario, “We've met our commitments,” when in fact the

reduction in greenhouse gas emissions that they present for review don't exist.

The Chair (Mr. David Oraziatti): Ms. Jaczek, go ahead.

Ms. Helena Jaczek: Again, we are committed to including offsets within the cap-and-trade program. It's certainly our intention that prior to allowing the use of offsets, we would ensure that rigorous standards for offsets were in place to ensure the environmental integrity of the reduction. But similar to the previous motion, we are not able to support this.

The Chair (Mr. David Oraziatti): Okay. Any—

Mr. Peter Tabuns: Just a recorded vote.

Ayes

Tabuns.

Nays

Barrett, Jaczek, Kular, Mangat, Moridi.

The Chair (Mr. David Oraziatti): The motion has been lost.

Conservative motion 14: Mr. Barrett, go ahead.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

“Integration with national system

“(7) A regulation under this section that relates to greenhouse gases shall not be made unless a national emissions trading system for greenhouse gases has been implemented under an act of the Parliament of Canada and the regulation is integrated into that system.”

We've heard discussion this afternoon about the fact that we've really got no business going anywhere with this until there's a minimum of a continental system in place and, through this amendment, a Canadian system or a national system, which would give us—well, unless we're going to be dealing directly with China, India, Brazil or Russia, it gives us that forum to deal with a global issue and to be part of a global approach.

The Chair (Mr. David Oraziatti): Further comment? Ms. Jaczek.

Ms. Helena Jaczek: We'd certainly agree that it would be ideal if the federal government would move on this issue. Unfortunately, we don't see much movement, so we're not prepared to wait. We've been calling on the federal government to put in place a national system, but that doesn't seem to be happening. We are not going to delay, waiting upon the Harper government.

The Chair (Mr. David Oraziatti): Any further comment? Conservative motion 14: All those in favour? Opposed? The motion is lost.

NDP motion 15: Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

“Same

(8) A regulation under this section that relates to greenhouse gases shall not permit any of the following persons to sell or otherwise transfer any financial instrument that, under the regulations made under clause (4)(a), was distributed to the person in respect of a generation facility, as defined in the Electricity Act, 1998, that uses coal or any other fossil fuel as a power source:

“1. Ontario Power Generation Inc. or any of its subsidiaries.

“2. A person who transmits electricity into the IESO-controlled grid, as defined in the Electricity Act, 1998.”

The Chair (Mr. David Orazietti): Further comment?

Mr. Peter Tabuns: Yes, if I may. I'm quite concerned that there may be people within the government who see the government's objective of shutting down coal as an opportunity to issue emission credits that could in turn be sold to other cap-and-trade systems in North America. I think that would be a perversion of the arguments that have been made for shutting down the coal plants, because, in fact, if you sell the credits that they have and allow someone else to pollute elsewhere in North America, you will have defeated a very large part of the reason for having acted on them in the first place. If indeed we're going to be reducing emissions through shutting down coal plants, there shouldn't be an escape hatch that allows pollution to continue somewhere else.

The Chair (Mr. David Orazietti): Ms. Jaczek.

Ms. Helena Jaczek: We certainly are committed to closing out the coal-fired generation plants by 2014. We're really proud of our government's initiative in that, and that certainly will be the single largest carbon reduction action in Canada.

In terms of the design of the cap-and-trade program and the treatment of alliances, the sort of issue that

you've raised is something that we're actively considering. We need to ensure that we're consistent with what's happening across North America and we want to make sure that—

The Chair (Mr. David Orazietti): Sorry, Ms. Jaczek, I'm just mindful of the clock here. If you've got something that you want to—

Ms. Helena Jaczek: No, I'll simply wrap up by saying that we're certainly committed to taking a very significant step in terms of climate change by closing our coal-fired generating plants.

Mr. Peter Tabuns: Then I'm sure you'll have no trouble supporting this amendment because it will mean that the reduction in carbon emissions will be real and absolute and not traded away as credits to someone else.

Ms. Helena Jaczek: At this point, this is a step too far for us.

The Chair (Mr. David Orazietti): Do members want to vote on this before we go?

Mr. Peter Tabuns: Yes. Recorded vote, please.

Ayes

Tabuns.

Nays

Barrett, Jaczek, Kular, Mangat, Moridi.

The Chair (Mr. David Orazietti): The motion's lost.

We're at motion 16, a Conservative motion. That's all the time we have today for committee. We'll be back Monday at 2 o'clock to finish up with the remaining amendments.

Committee is adjourned.

The committee adjourned at 1800.

CONTENTS

Wednesday 18 November 2009

Environmental Protection Amendment Act (Greenhouse Gas Emissions Trading), 2009, Bill 185, <i>Mr. Gerretsen</i> / Loi de 2009 modifiant la Loi sur la protection de l'environnement (échange de droits d'émission de gaz à effet de serre), projet de loi 185, <i>M. Gerretsen</i>	G-1167
--	--------

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Orazietti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldeep Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. Reza Moridi (Richmond Hill L)

Mr. David Orazietti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Toby Barrett (Haldimand–Norfolk PC)

Mr. John Gerretsen (Kingston and the Islands / Kingston et les Îles L)

Mr. Peter Tabuns (Toronto–Danforth ND)

Also taking part / Autres participants et participantes

Ms. Heather Pearson, executive lead, strategic support, Ministry of the Environment

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. Doug Beecroft, legislative counsel



G-48

G-48

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Monday 23 November 2009

Journal des débats (Hansard)

Lundi 23 novembre 2009

Standing Committee on General Government

Environmental Protection
Amendment Act (Greenhouse
Gas Emissions Trading), 2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant la Loi sur
la protection de l'environnement
(échange de droits d'émission
de gaz à effet de serre)

Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 23 November 2009

Lundi 23 novembre 2009

*The committee met at 1406 in room 151.*ENVIRONMENTAL PROTECTION
AMENDMENT ACT (GREENHOUSE GAS
EMISSIONS TRADING), 2009LOI DE 2009 MODIFIANT LA LOI SUR
LA PROTECTION DE L'ENVIRONNEMENT
(ÉCHANGE DE DROITS D'ÉMISSION
DE GAZ À EFFET DE SERRE)

Consideration of Bill 185, An Act to amend the Environmental Protection Act with respect to greenhouse gas emissions trading and other economic and financial instruments and market-based approaches / Projet de loi 185, Loi modifiant la Loi sur la protection de l'environnement en ce qui concerne l'échange de droits d'émission de gaz à effet de serre ainsi que d'autres instruments économiques et financiers et approches axées sur le marché.

The Chair (Mr. David Oraziotti): Committee members, welcome back to the Standing Committee on General Government. We left off clause-by-clause at Conservative motion number 16, so I'll leave it with Mr. Barrett, if you would like to get started and move that motion for us.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Competitive disadvantage

"(8) A regulation under this section that relates to greenhouse gases shall not be made unless the government of Ontario has established a program to assist persons who may be subject to a disproportionate competitive disadvantage as a result of the regulation."

The concern here, certainly with the proposed bill itself, is putting the province of Ontario out in front of the pack compared to most of the jurisdictions that we do business with, and that we run that far ahead and we turn around and find out that we have implemented legislation, let alone implemented regulation, that would hamper economic activity within the province unfairly compared to other jurisdictions that may well not have legislation or regulation to hamper their economic activity for the purpose of cap-and-trade and dealing with climate change.

There are concerns too around litigation, retaliatory tariffs. This conceivably could be the other side of the

issue, where certain jurisdictions—perhaps Japan, perhaps the United States—have brought forward legislation and perceive that the province of Ontario, or Ontario within the Dominion of Canada, is not up to snuff, so to speak, does not have legislation of the calibre of legislation that they have. Ontario could be perceived as not having the allowances or the offsets to diminish greenhouse gases, and hence could be subject to retaliatory action with respect to international trade—could be subject to tariffs, for example.

Again, I'm just opening the question of, where is government if we were to find that our trade was embargoed with respect to certain other jurisdictions that may perceive themselves to be far ahead of the province of Ontario as far as implementing cap and trade?

The Chair (Mr. David Oraziotti): Ms. Jaczek, your comments?

Ms. Helena Jaczek: We won't be able to support PC motion 16. We certainly do share some of the concerns that Mr. Barrett has raised, but we feel these are very well addressed by government motion 19 in ensuring that auction revenues for greenhouse gas reduction purposes will be used to help industries invest in transformative technologies, programs, infrastructure, and in so doing will in fact create some new jobs. So although Ontario is certainly out with groups such as the Western Climate Initiative, we don't feel that we are way out ahead of the pack in any way at all. We're working in concert.

To a certain extent, though, we are happy to be a leader in this regard, certainly as it compares with some other jurisdictions. So we will not be supporting PC motion 16.

The Chair (Mr. David Oraziotti): Any further comments? All those in favour of Conservative motion 16? Opposed? The motion's lost.

We'll move to Mr. Tabuns, NDP motion 17.

Mr. Peter Tabuns: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Same

"(9) Any amount paid to the crown in right of Ontario from the distribution of financial instruments under the regulations made under clause (4)(a) shall be used for the following purposes, in the following order of priority:

"1. First, to support transition by persons and other bodies away from fossil fuel use.

"2. Second, to support a just transition for workers affected by the phasing out of fossil fuels.

"3. Third, to assist people whose livelihood has been negatively affected by climate change, including but not limited to farmers and victims of extreme weather."

The Chair (Mr. David Oraziotti): Thanks, Mr. Tabuns, for that. However, this motion is out of order as it involves the expenditure of money. Standing order 57, and for the benefit of members: "Any bill, resolution, motion or address, the passage of which would impose a tax or specifically direct the allocation of public funds, shall not be passed by the House unless recommended by a message from the Lieutenant Governor, and shall be proposed only by a minister of the crown." So I have to rule that motion out of order.

Conservative motion 18, Mr. Barrett.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Technology fund

"(9) A regulation under this section that relates to greenhouse gases shall not be made unless the government of Ontario has established a technology fund to assist in,

"(a) moderating the cost of new technology to reduce greenhouse gas emissions; and

"(b) directing investment to the development of new technology to reduce greenhouse gas emissions."

I'm not sure if—do I continue discussion on this?

The Chair (Mr. David Oraziotti): If you want to add a further explanation on your motion, you can; otherwise I'll ask the government or any other members if they'd like to speak.

Mr. Toby Barrett: Very simply, if this government is serious about reducing greenhouse gas emissions, then it's fine to bring in this proposed legislation, to bring in regulation, to bring in all kinds of rules and red tape and forms to fill out, and to move money around. But we think it's important—and I know several deputants called for this, the creation of a technology fund, where the government, which would be the recipient of funding through this process, must also play a role in setting aside funds for research, development and the implementation of technologies. I certainly talked about carbon capture and storage in the past as one example that, at minimum, requires research and requires a look at.

The Chair (Mr. David Oraziotti): Thank you, Mr. Barrett. Ms. Jaczek, any comments?

Ms. Helena Jaczek: Simply to say that we believe that government motion 19 addresses some of the concerns the member has raised, and that has been duly accepted.

The Chair (Mr. David Oraziotti): Any further comment? Conservative motion 18, all those in favour? Opposed? The motion is lost.

Motion 19 has been dealt with.

Motion 20: Mr. Barrett, go ahead.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"No tax

"(10) A regulation under this section that relates to greenhouse gases shall not impose a tax on persons who emit greenhouse gases."

We do know that at the federal level—the federal opposition at the time, Stéphane Dion—there was a great deal of discussion with respect to a carbon tax. As I recall, a number of deputants and submissions that this committee received advocated a carbon tax rather than a cap-and-trade system. A carbon tax is normally very transparent, much more so than, say, the cap-and-trade system, about which there's a concern that it could set up a system for what in effect would be a hidden tax.

Again, whether it's a carbon tax or cap and trade or cap and tax, it does get muddled after a while. When the choice is being made between a cap-and-trade system and a carbon tax system, I feel it's important for an amendment, if this bill were to pass, where the province of Ontario—the government—does not put itself in a position where it could have a double impact on those businesses, manufacturers and the economy under the guise of diminishing greenhouse gas or under the guise of environmentalism.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: Again, government motion 19 has addressed some of these concerns. Our amendment would create a special-purpose account, specifying that auction revenues would be directed toward greenhouse gas reduction, particularly in the capped sectors.

This approach definitely would not impose a tax and, we believe, is consistent with many of the comments we've received from industry and other stakeholders. So we will not be supporting this motion.

The Chair (Mr. David Oraziotti): Any further comments?

Conservative motion number 20: All those in favour? Opposed? The motion is lost.

Mr. Barrett, number 21 is yours as well.

Mr. Toby Barrett: I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Consultation

"(11) A regulation that relates to greenhouse gases shall not be made under this section unless the minister has engaged in transparent public consultation on the final draft of the regulation."

Very simply, the purpose of this amendment is to provide a guarantee to people in Ontario that there would be full public consultation, which would include elected members of the Legislative Assembly, before this legislation is allowed to be implemented and before the final draft of a regulation is implemented. That would entail public hearings pulling together a committee and having some elected members on that committee.

The Chair (Mr. David Oraziotti): Ms. Jaczek.

Ms. Helena Jaczek: We don't believe this motion needs to be included in Bill 185. We have consulted very, very broadly to date, and we intend to continue that kind of consultation. There have been two discussion papers and direct engagement with stakeholders in the various sectors. The Environmental Bill of Rights registry actually requires this type of consultation, and this is precisely what we have been doing. In fact, we heard from a number of deputants that they were very pleased with the amount of consultation. So we feel that our actions to date have been all that is required, and we intend to continue this type of broad consultation.

The Chair (Mr. David Oraziotti): Any further comments?

Conservative motion number 21: All those in favour? Opposed? The motion is lost.

The last remaining motion, number 22, is yours as well, Mr. Barrett.

Mr. Toby Barrett: The motion is somewhat an extension of the last proposal.

I move that subsection 2(2) of the bill be amended by adding the following subsection to section 176.1 of the Environmental Protection Act:

"Approval of Assembly

"(12) A regulation under this section that relates to greenhouse gases is not effective unless it has been approved by a resolution of the Legislative Assembly."

We feel that this is important to ensure, again, that elected members have a say in the regulation stage of this legislation, given that, as we know, this is enabling legislation. It's only a page and a half, as opposed to the House of Representatives legislation, which is well over 1,000 pages and pretty well maps out—and mapped out for the Senate—exactly where the elected members were going with that one.

As far as the actual marching orders of this legislation, we feel it is important, given the impact of this, that we have Legislative Assembly approval of any regulation that comes out of this fairly vague legislation. Without that, the concern is that you're giving somebody a blank cheque.

The Chair (Mr. David Oraziotti): Ms. Jaczek, go ahead.

Ms. Helena Jaczek: As I've already stated, we intend to keep the dialogue open, in terms of discussing the content of regulations with our stakeholders. Of course, the Legislature does grant the government authority through legislation to write regulations. With this type of consultation and making sure we're working in concert with jurisdictions in the US, we're confident that we will have some excellent legislation through this process.

The Chair (Mr. David Oraziotti): Comments?

Mr. Toby Barrett: A recorded vote, when we get to that stage.

The Chair (Mr. David Oraziotti): Any further comments? A recorded vote has been called for on Conservative motion 22.

Ayes

Barrett.

Nays

Balkissoon, Jaczek, Kular, Mauro, Moridi, Tabuns.

The Chair (Mr. David Oraziotti): The motion is lost.

Shall section 2, as amended, carry? All those in favour? Opposed? Carried.

Shall sections 3 and 4, with no amendments, carry? Carried.

Shall the preamble carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 185, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you. That concludes hearings on Bill 185 and clause-by-clause. The committee is adjourned.

The committee adjourned at 1423.

CONTENTS

Monday 23 November 2009

Environmental Protection Amendment Act (Greenhouse Gas Emissions Trading), 2009, Bill 185, <i>Mr. Gerretsen</i> / Loi de 2009 modifiant la Loi sur la protection de l'environnement (échange de droits d'émission de gaz à effet de serre), projet de loi 185, <i>M. Gerretsen</i>	G-1181
--	--------

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziatti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. Reza Moridi (Richmond Hill L)

Mr. David Oraziatti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Bas Balkissoon (Scarborough–Rouge River L)

Mr. Toby Barrett (Haldimand–Norfolk PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. Doug Beecroft, legislative counsel



G-49

G-49

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Wednesday 25 November 2009

Journal des débats (Hansard)

Mercredi 25 novembre 2009

Standing Committee on General Government

Technical Standards and Safety
Statute Law Amendment Act,
2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant des lois
en ce qui a trait aux normes
techniques et à la sécurité



Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Wednesday 25 November 2009

Mercredi 25 novembre 2009

The committee met at 1601 in room 151.

SUBCOMMITTEE REPORT

The Chair (Mr. David Orazietti): Good afternoon, everyone. Welcome to the Standing Committee on General Government. The first item of business is a subcommittee report. Could someone read that for us? Mr. Mauro, please?

Mr. Bill Mauro: Thank you, Chair. Your subcommittee met on Friday, November 20, 2009, to consider the method of proceeding on Bill 187, An Act to amend the Technical Standards and Safety Act, 2000 and the Safety and Consumer Statutes Administration Act, 1996, and recommends the following:

(1) That, pursuant to the order of the House, the committee meet in Toronto on Wednesday, November 25, 2009, for the purpose of holding public hearings.

(2) That the committee clerk, with the authorization of the Chair, post information regarding public hearings on the Ontario parliamentary channel, the Legislative Assembly website and the Canada NewsWire.

(3) That interested parties who wish to be considered to make an oral presentation contact the committee clerk by 12 noon on Tuesday, November 24, 2009.

(4) That groups and individuals be offered 15 minutes for their presentation should the committee receive eight or fewer requests or 10 minutes for their presentation should the committee receive nine or more requests.

(5) That, in the event all witnesses cannot be scheduled, the committee clerk provides the members of the subcommittee with a list of requests to appear by 12 noon on Tuesday, November 24, 2009.

(6) That the members of the subcommittee prioritize and return the list of requests to appear by 1 p.m. on Tuesday, November 24, 2009.

(7) That the deadline for written submissions be 5 p.m. on Thursday, November 26, 2009.

(8) That, pursuant to the order of the House, proposed amendments be filed with the committee clerk by 12 noon on Friday, November 27, 2009.

(9) That, pursuant to the order of the House, the committee meet for the purpose of clause-by-clause consideration of the bill on Monday, November 30, 2009.

(10) That the committee clerk, in consultation with the Chair, be authorized prior to the adoption of the report of the subcommittee to commence making any preliminary

arrangements necessary to facilitate the committee's proceedings.

The Chair (Mr. David Orazietti): Thank you, Mr. Mauro. Any comments on the subcommittee report? Ms. Munro?

Mrs. Julia Munro: Just to make one brief comment for the record: the fact that the meeting was held on Friday, November 20 and that the clerk was asked to put the information by the various methods outlined here—that people had, basically, 24 hours, which I think is really unrealistic for people to be able to know about it and fit it into their schedule for today. So I would just want it noted that point (2) could not be done before Monday.

The Chair (Mr. David Orazietti): Fair enough. Any further comments? Seeing none, all in favour—

Mr. Peter Tabuns: Mr. Chair, I just concur.

The Chair (Mr. David Orazietti): Okay. Any further comments? Seeing none, all in favour of the subcommittee report? Carried.

Mr. Peter Tabuns: Mr. Chair, before we proceed, I've had a request from one of the speakers today: if she could have a photo taken of her while she's making her presentation. I understand it's within your authority.

The Chair (Mr. David Orazietti): Yes, that's not a problem.

Mr. Peter Tabuns: Not a problem? Thank you.

TECHNICAL STANDARDS AND SAFETY
STATUTE LAW AMENDMENT ACT, 2009LOI DE 2009 MODIFIANT DES LOIS
EN CE QUI A TRAIT AUX NORMES
TECHNIQUES ET À LA SÉCURITÉ

Consideration of Bill 187, An Act to amend the Technical Standards and Safety Act, 2000 and the Safety and Consumer Statutes Administration Act, 1996 / Projet de loi 187, Loi modifiant la Loi de 2000 sur les normes techniques et la sécurité et la Loi de 1996 sur l'application de certaines lois traitant de sécurité et de services aux consommateurs.

CANADIAN FEDERATION
OF INDEPENDENT BUSINESS

The Chair (Mr. David Orazietti): We'll move to the presentations. Our first presentation is the Canadian

Federation of Independent Business. Good afternoon, and welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time not used for your presentation will be given to members of the various caucuses to ask questions about your presentation. Please, whoever will be speaking, state your name for the purposes of Hansard, and you can begin when you're ready.

Mr. Satinder Chera: Thank you, Mr. Chair. My name is Satinder Chera, and I'm the director of provincial affairs with the Canadian Federation of Independent Business. I'm joined today by my colleague Angela Cloutier, the federation's policy analyst here in Ontario. We will be speaking entirely from the slide deck that is in the presentation on the right side of your kits.

As you can tell from the slide deck, we think that Bill 187 is certainly a step in the right direction and way, way long overdue in terms of transparency and accountability.

Going directly to slide number 2, just a quick word about CFIB: We have been in operation for 38 years now. We have 105,000 members across the country, with 42,000 in Ontario. These are Canadian-owned, privately held small businesses. We accept no government funding; we are 100% financed by our members, and it is our members that set our association policy.

Going to slide number 3, as you can tell, 81% of Ontario's businesses employ fewer than five people. This is a critical point because oftentimes, regulations and policies are made that don't accurately reflect the diversity of our business community.

Slide number 4: CFIB's business barometer is something that we've been tracking now on a monthly basis. It indicates that in the month of October, small business optimism dropped off somewhat in the province of Ontario. We think that's attributable to the high dollar and the impact on manufacturers.

Slide number 5: You have before you a survey that we do with our members in their place of business every year. It outlines the key priorities that our members see for government action. I've circled "government regulation and paper burden" because that continues to be a huge challenge and certainly is relevant to the discussion today.

Going to slide number 6, the regulatory paradox, as we would refer to it: Regulations, of course, always have at least one laudable purpose, the public good, but they can be a bad thing if they exceed the government's capacity to administer them or they exceed the ability of small businesses to cope with them.

Going to slide number 7: We think that the delegated administrative agency model is inherently defective. Why? Obviously, from a government standpoint, we can see why it's attractive. It delegates responsibility for safety to an arm's-length agency, i.e., it helps to remove politics from any calculation concerning health and safety, which is a good thing. But it also takes the cost and employee head count off government books.

However, the Sunrise Propane explosion demonstrated two things: One is that the public continues to hold a

government, not these arm's-length agencies, responsible for public safety, and also, the potential costs can be very high for everyone when things go wrong.

I'll pass it over to my colleague Angela for the rest of our presentation.

Ms. Angela Cloutier: When it comes to the TSSA and other delegated agencies, there is a high degree of dissatisfaction amongst our members. For instance, let's look at governance: 93% of Ontario's businesses have fewer than 20 employees, yet they are inadequately represented on their boards and on the advisory councils.

On the question of the fees process, hourly fees present a moral hazard to inspectors and the organizations. There's no effective appeals mechanism. As a matter of fact, the TSSA itself admits that over 50% of its appeals are due to fee charges.

Small businesses have no effective appeal of regulatory decisions either. In fact, the statutory director oversees the regulations, and he's also the one who hears the appeals, providing no effective appeal process for small business. It's difficult to believe, yet it is true.

As it stands, government lacks the ability to exercise an appropriate degree of control and supervision over their agencies.

In the next two slides—the first slide shows how the TSSA sees itself and how it's doing an effective job. However, if you switch over to slide number 10, you'll see the results that the CFIB has obtained and the questions that it asked members, the customers—not only our customers, but TSSA customers. And it shows here that the effectiveness is not quite as high as is proposed by the TSSA.

1610

Slide number 11: When it comes to Bill 187, we do think it is a step in the right direction. CFIB's long-standing concerns include the government's lack of ability to exercise an appropriate degree of control and supervision over the TSSA. We maintain that the TSSA should be subject to review by the Auditor General and that the TSSA board lacks adequate small business representation.

When it comes to Bill 187, we are pleased to see that the minister will guide the strategic focus of the TSSA by issuing policy directives. We're also pleased to see that the Auditor General will have access to the records of the TSSA, and moreover, that the minister will appoint the chair and vice-chair from the board.

That being said, more needs to be done. Therefore, our recommendations to the committee are as follows: Move quickly to implement Bill 187; greater scrutiny and accountability of the TSSA is long overdue; and extend those changes to the other delegated agencies.

Secondly, implement the recommendations enclosed in the independent review conducted by Elaine Todres. You will have our report to Ms. Todres enclosed in your kit as well, on the right-hand side. Included here are her words, "For both the complaint process and the appeals process, the lack of an independent body to whom a

customer can complain may reduce the likelihood of a complaint being filed.”

Finally, convene a working group to address the impact of new regulations on small propane operators. Small operators agree with the need for new regulations; however, the financial burden ahead for them is great. There are numbers such as \$30,000 and \$40,000 being bantered about in order to meet these regulations. We would adopt a framework for small operators that is similar to the 2004 changes to the drinking water regulations.

Thank you, ladies and gentlemen. We're ready to take your questions.

The Chair (Mr. David Oraziotti): Thank you very much. Ms. Munro, we have about seven minutes total, so we'll try to get through all the caucus members. Go ahead.

Mrs. Julia Munro: Thank you very much for coming here today. I wondered if you could give us a little more information with regard to some of the proposals that you have put here on the table in terms of the need for greater scrutiny, the question of the working group. One of the things that is very clear, in looking at the delegated authority, is the difference between the larger operators and the smaller. Obviously, by your very nature you represent the smaller ones, and I think that's a balancing act for government in a number of areas. So, given your experience and expertise it would just seem to me that this might be a point you would be able to give us more information on.

Mr. Satinder Chera: Thank you, Ms. Munro. Let me start off by saying that our members certainly respect and see the need for having measures in place to uphold public safety and the health of all Ontarians. I think the challenge becomes when you impose regulations that are a one-size-fits-all model. Smaller firms don't have the resources that larger companies do; this is one of the reasons why the government has put in place the Open for Business initiative, which is to try to get at the issue of the regulatory burden.

When it comes to examples, we know that with the drinking water regulations, in the aftermath of the tragedy in Walkerton, one of the concerns we started to receive from members is that this one-size-fits-all model is going to hit smaller firms really hard, to the point where they'll just go out of business. So the government, to its credit—in 2004, then-Minister Dombrowsky put in place changes to the water regulations that accepted that not all businesses are the same, that not all businesses have the resources to carry out the regulatory functions. We would argue that in this instance here, we've been hearing a lot of concerns from small propane operators that the government would look at what they've already done in other areas of public policy and adopt similar measures in this instance here.

Mrs. Julia Munro: Do I have more time?

The Chair (Mr. David Oraziotti): Briefly.

Mrs. Julia Munro: Okay. I was going to ask you: I don't remember which regulation it was that the expert

panel had; it was something to do with the filing of a plan with the local fire department.

Mr. Satinder Chera: Yes.

Mrs. Julia Munro: It's my understanding that this would be something that they might not necessarily have the expertise to deal with.

Mr. Satinder Chera: Yes. This is something that speaks to customer service at the TSSA and some of the issues that this bill can address.

Regulations were passed which required small operators in specific industries to file a risk management plan. The risk management plan had to be signed off on by the local fire department. We had a member that spent \$5,000 to get an engineer to help them put together a risk management plan. That plan was then taken by the business owner to the local fire department, at which point the fire department said, “We have neither the resources nor the ability to sign off on these sorts of plans.”

We raised this issue with the TSSA because the TSSA also turned around and said to our members, “If you do not have this plan signed off, we will revoke your licence to operate.” We wrote to the TSSA a series of letters where we asked them for one very specific commitment, which was that, owing to this type of a situation where a business has spent the money, has the plan in place, but the fire department refuses to sign off on it because they don't have the resources, they will not yank their ability to continue to operate. It's not that they don't agree with public safety, but this is one area where you should have some sort of discretion.

The Chair (Mr. David Oraziotti): Okay, I'm going to stop you there. You might be able to elaborate on this point as we go through, but I need to move on. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I would appreciate it if you would continue with your elaboration.

Mr. Satinder Chera: On that point—and thank you, Mr. Tabuns—we wrote to the TSSA, and the correspondence back and forth is in your kits. The TSSA could not even come to the point of acknowledging the concern, let alone providing any type of assurance.

Then we went to the government, because the TSSA said, “If you have ongoing problems in this area, call the government,” which kind of astonished us because this is an arm's-length agency that the government has set up. Either they're in or they're out. If they're out, they have a certain amount of responsibility to the customers, to businesses in Ontario, to treat them with a certain level of respect. If a business comes forward and has done exactly what the government has said and it is then found that the participating bodies are not able to sign off on these types of rules, then what is wrong with the TSSA simply writing and saying, “We will not force you out of business”? Thankfully, our understanding in speaking with Minister McMeekin is that his ministry is looking at this very, very closely. Hopefully, there will be a resolution fairly soon.

I think it does speak to the fact that if you take a little bit of light off the TSSA, they'll go back to their bad habits.

Mr. Peter Tabuns: Could you just speak very briefly about these appeals on fee charges? I noticed in your letter some discussion about that, and I'm curious as to what is really there.

Mr. Satinder Chera: Let me give you another example: We had a member that called us two years ago. They had trouble with the TSSA on a particular policy issue. The member said, "I'm frustrated. I've contacted them non-stop. They're not even willing to listen." Our member services department ended up contacting the TSSA on the member's behalf. The member, two weeks later, got a bill for \$500 because the TSSA spoke to the CFIB. It was because our member had gotten TSSA to call on their behalf that the TSSA wanted to go after our member. Again, thankfully, the Ministry of Consumer Services looked at the issue and brought it to the TSSA's attention, and the \$500 fee was waived. But you can imagine that for a lot of small firms out there, this would be very intimidating. Why would they even be put in a position like that, that to simply call and get them to interpret they're going to be charged \$500? This is a true story. This is not made up. This is a true story, and in fact the ministry was involved.

Mr. Peter Tabuns: Unfortunately, I believe you.

The Chair (Mr. David Oraziotti): Thanks; that's the time. Go ahead, Mr. Mauro.

Mr. Bill Mauro: I'm substituting here today for the PA on this bill, who can't be with us today. I want to ask you about this particular study that you referenced, the second speaker, because I wasn't familiar with it, this Elaine—you know the one I'm referring to?

1620

Ms. Angela Cloutier: Yes; Ms. Todres.

Mr. Bill Mauro: It's in our package here. This is not the propane safety review, of course, that we're talking about. Can you tell me a little bit more about it?

Ms. Angela Cloutier: Ms. Todres did meet with a lot of stakeholders and she did meet with us. What you have in your package right there is our submission to Ms. Todres on the TSSA and delegated agencies. During the month of May 2008, through to her report, which came out just recently in September, I believe, she conducted the different stakeholder meetings on all of the delegated agencies. Two of them that she reviews are the TSSA and the ESA, the Electrical Safety Authority, and the report goes through the entire governance. There is a provision as to how these agencies are functioning, their boards, their authorities. She's quite thorough. I must say that, as you saw from our report here, we were able to see some outcomes from our concerns being highlighted in her report. I know that the report is available to you. It's quite extensive. It's 438 pages. It deals with all of the agencies.

Mr. Bill Mauro: I just want to close by thanking you for your acknowledgement of the significant move in the bill, especially on the part about the Auditor General and his role that he's going to be able to play from this point forward, should the legislation pass.

The Chair (Mr. David Oraziotti): That's all the time we have for your presentation today. We appreciate you coming in.

ONTARIO PUBLIC SERVICE EMPLOYEES UNION

The Chair (Mr. David Oraziotti): Our next presentation is Ontario Public Service Employees Union. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. The time that you don't use will be divided among the caucuses here for questions. So just state your name for the record and you can start.

Mr. Smokey Thomas: My name is Smokey Thomas. On my right I have Joe Kavanagh. Joe's a member of OPSEU's enforcement and renewal committee of the Ministry of Economic Development and Trade. Megan Park is our senior campaigns officer. I'd like to thank you for the opportunity to be here today. Thank you, Brother Tabuns.

We are pleased to provide the following commentary on Bill 187. It has been more than 10 years since the Conservative government of Mike Harris placed public safety and consumer protection in private hands. In 1996, the Harris government delegated the responsibility for several laws that regulate industries to the industries themselves. As a result, a number of business sectors, including several with serious public safety implications, became self-regulating. Five industry-run authorities took over the licensing, inspections, enforcement and complaint-handling work once done by crown employees. The most well known, and the subject of our presentation today, is the Technical Standards and Safety Authority, the TSSA.

As you know, the TSSA regulates the following sectors: the transportation, storage, handling and use of propane, diesel, gasoline and natural gas; boilers and pressure valves; amusement park rides and elevators; and upholstered and stuffed articles.

In addition to the TSSA, the following sectors got their own industry-run authorities: travel agents and wholesalers, real estate agents and brokers, motor vehicle salespersons and dealers, and electrical contractors and electricians.

Most of the crown employees who had administered and enforced the regulations governing these sectors had worked in the consumer protection branch and the technical standards division of the Ministry of Consumer and Commercial Relations. They were public employees. They were formally appointed under the Public Service Act of Ontario. They worked for the people of Ontario.

If a citizen was unhappy with a service provided by the consumer protection branch or the technical standards division, she or he could file a complaint with the Ontario Ombudsman, the Auditor General could conduct independent value-for-money and compliance audits of the branch and division, and every person in Ontario had a right of access to a record or part of a record relating to

the work of the branch and division, unless it was a cabinet document, part of a law enforcement proceeding or related to labour relations.

Once these industry-run self-regulating authorities were set up, the administration and enforcement of laws protecting public safety went behind a cloak of secrecy. The authorities are managed by boards of directors that come from the very businesses under regulation. This places the directors in potential conflicts of interest between their role as representatives of particular sectors and their obligations as directors to uphold legislation. They report to the Minister of Consumer Services but not to the Legislature and therefore not to the people of Ontario.

The authorities' employees, because they are not public employees, are not subject to the rights and obligations, or the protections, of the Public Service of Ontario Act. This act lays out the procedures for public employees to disclose wrongdoing in government. The act states that no person shall make a reprisal, such as discipline or termination, against a public employee for making a disclosure of wrongdoing or co-operating with an investigation into a disclosure of wrongdoing. No such protection is afforded to the employees of these five industry-run authorities, including the TSSA. It is worth noting that there are many more employees working at these authorities than worked in government.

Self-regulated businesses carry the tab for the authorities through licensing and registration fees. They may be interested to know that back in the mid-1990s, between 300 and 400 OPSEU members in total administered and enforced the legislation now carried out by four of the five industry-run authorities.

The TSSA alone has more than 360 staff, about four times the number of employees who worked in the technical standards division of the Ministry of Consumer and Commercial Relations in the mid-1990s.

The authorities' staffs may be doing a good job enforcing their respective legislation, or there may be disasters waiting to happen. Certainly the traffic Sunrise Propane explosion of August 2008 suggests that the TSSA staff were operating within an inspection-and-enforcement environment that has serious systemic failings. But the point is, we simply don't know, because there is no transparency around their operations and no accountability to the people of Ontario.

It is OPSEU's view that the TSSA and the four other authorities simply do not serve the public interest. That is why we are here today.

We have reviewed the government's amendments to the legislation governing the TSSA, and in our opinion they simply do not go far enough to close the transparency and accountability gap. Yes, if the proposed government amendments pass, the Auditor General will be able to audit the TSSA, but no citizen will have recourse to the Ombudsman or be able to access TSSA records under the freedom-of-information and protection-of-privacy legislation.

The proposed amendments give the Minister of Consumer Services powers that the government should

already have in relation to the TSSA and all of the industry-run authorities, such as:

- to issue policy directives that TSSA has to implement;

- to enter into a memorandum of understanding on governance with the TSSA;

- to require reviews related to performance, accountability and governance; and

- to appoint an administrator to assume control of the TSSA if it is in the public interest.

I suppose that would be like appointing a supervisor to take over a hospital—if there are no disasters.

Another amendment gives the minister the power to appoint the TSSA's chair and vice-chair. This change does not address the basic problem: The 13 directors of the proposed corporation come directly from businesses under regulation. Therefore, they are in potential conflict of interest, as outlined above.

So, in OPSEU's view, the government's amendments do not address the root of the problem with the TSSA and all of the industry-run authorities: Industry comes first and the public comes second. This is a very serious problem for the people of this province, because the purpose of the legislation that the TSSA enforces is to enhance public safety.

Let's be clear: After this bill is amended, the TSSA would only have the clear authority to take action to limit, reduce or remove an imminent hazard to public safety, and require operators to pay costs. This directly reinforces the fact that the overall direction of these authorities is that industry comes first and public safety comes second.

As committee members will know, OPSEU represents the staff at the consumer services bureau in the Ministry of Consumer Services. They handle general complaints from consumers regarding the purchase of goods and services. Our members' loyalty is to protecting the public. They are not beholden to industry. Our members refer complaints from consumers about the regulated areas to the respective industry-run authority.

Consumers report that when they complain to the TSSA, the authority's number one concern is who will pay for the error that the consumer is reporting—sort of like what the Canadian Federation of Independent Business talked about.

1630

A consumer will call the TSSA to complain about a contractor who is licensed by the authority. When they finally get through to a TSSA representative, they are typically told that the TSSA will go out and inspect the installation but will not take action against the contractor if they find the installation was done improperly. Consumers are told that their only recourse is to sue the contractor in Small Claims Court, according to the TSSA representative. And we have experience with that in our membership. The TSSA may then refer the consumer to the consumer services bureau, which has no regulatory authority over the contractor. Surely this can't be how the

government thinks public safety and consumer protection should be enforced in our province.

The whole point of regulating sectors such as boilers and pressure valves, elevators and amusement parks, and fuel storage and handling is to ensure that there are qualified and licensed contractors in the marketplace to provide a safe service. If they aren't doing that, the law should ensure that they are no longer in business, preying on consumers.

As one former OPSEU member said, "We knew who the crooks were and we made sure they were run out of town." This former member had worked for close to 20 years in the consumer protection branch before their work was handed over to the industry-run authorities by the Harris government.

Justice Dennis O'Connor, in his part 2 report of the Walkerton inquiry, very clearly called for effective government regulation and oversight to ensure a safe drinking water system. My union believes that that principle—effective government regulation and oversight—must apply in all areas of public safety. At the end of the day, the people of Ontario expect their government to ensure their safety, not a corporation managed by the very businesses under regulation. That is why the work of all industry-run authorities, including the TSSA, should be brought back into the Ontario public service.

I'm sure it comes as no surprise to this committee that our union makes this recommendation. But it is our firm belief that it is only by bringing this important regulatory work back under the direct oversight of our elected representatives that the public interest would be served. Thank you.

The Chair (Mr. David Oraziotti): Thank you very much for your presentation. We only have a couple of minutes for questions, so we'll start with Mr. Tabuns and do the best we can here. Go ahead, Mr. Tabuns. You had something brief.

Mr. Peter Tabuns: Thank you, Smokey. Thanks very much for coming in and making that presentation.

Could you enlarge a bit on the whole question of conflict of interest and the public good that we face here—how it is that companies are supposed to be guarding themselves against themselves in the marketplace?

Mr. Smokey Thomas: Well, I find it ironic. I'm a health care professional, and we try to get seats on the boards of governors of the hospitals. The NDP government did that in psych hospitals. We were told the reason is, "You're in a conflict-of-interest situation. You can't regulate yourself." We were just trying to bring our labour voice to the table, yet somehow you can take public safety here—and the Tories put it out to the private domain, and they're going to regulate themselves.

I've sat on boards of colleges where they let the very people running the kitchens and the cafeterias, making millions of bucks out of the system, sit on the board. Somehow that wasn't a conflict of interest, yet when they want to put me on there as a labour person, I was the only conflict of interest. So it really is hypocritical.

If I could add one little bit, whoever wrote the book on Reinventing Government, in my view, contemplated—

we never agreed with Reinventing Government, just so you know—getting out of direct provision of services but hanging on to the regulatory capacity. So you would contract out highway maintenance, yet a public servant, a public sector worker, would oversee those contracts. So that would be the due diligence for the taxpayer.

This move, when they did it, dumbfounded even us, because that went way beyond what Reinventing Government said.

The Chair (Mr. David Oraziotti): I'm going to have to stop you there. We need to move on.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. David Oraziotti): Mr. Mauro, go ahead.

Mr. Bill Mauro: Thank you for your presentation.

I don't have a lot of time. A couple of things quickly: You spoke briefly about the role of the Auditor General, and I just wanted to put on the record that not only is the Auditor General being given powers of inspection on the financial situation, but he also has an ability to assess the effectiveness of the organization's policies and procedures, which would allow him, as we understand it, to deal with the safety side as well. At least that's my interpretation of it.

The other point I'd like to give you an opportunity to comment on is the establishment of the chief safety and risk officer that's contained within the legislation. It is a significant change, and it is an independent officer. We around here, all of us who do work in the Legislature, often talk about—I think there are seven independent officers of the Legislature who do not report to government but report back to the Legislative Assembly. This particular position would be an independent person not employed by TSSA but reporting to the board of the TSSA with a clear mandate of independence and safety. So I'm interested on your thoughts on that particular role.

Mr. Smokey Thomas: I wouldn't take the second job—not being employed by them but reporting to them—because I don't really see where there is any authority.

As far as the Auditor General—that's all well and good, and we see that as a good step, but we just don't think it goes far enough. We think taxpayers' dollars and public services are best held in this capacity in the public sector, with the government of Ontario actually doing the overseeing as well as the regulating. It takes all the conflict of interest out; it makes it neutral. That way, the TSSA or those member companies can't fire the person who's inspecting them.

Nursing home inspectors are still in the public service. Do you understand what I'm saying? It's just that inspection and enforcement should be a public sector performance. It takes all that conflict of interest out. And they have protections to be a whistle-blower. I can't use the name of the guy that I know, but there are contractors and people who work for the TSSA who say, "If we could speak up, we would, but we can't because we won't be employed." So it's fraught with problems.

Nurses aren't allowed to regulate themselves. The College of Nurses of Ontario is set up under regulation—

mind you, I have no use for the college of nurses; we call them "the headhunters," but at least it's much more accountable to patients. We pay a fee and everything else, but this TSSA is run by the industry; this is run by professionals.

The Chair (Mr. David Oraziotti): Thanks, Mr. Thomas. I have to stop you on that point. Mr. Mauro, thank you.

Ms. Munro, do you have any questions, briefly?

Mrs. Julia Munro: Yes. During the previous brief, which I believe you were here for, there were some questions brought up, particularly the question of accountability and the importance of having the Auditor General. The enhanced role that the minister would have, as contemplated by this piece of legislation—I just wonder if you care to comment on the role of the minister in regard to this piece of legislation.

Mr. Smokey Thomas: Again, I don't know how many average citizens ever get to talk to a cabinet minister in the province of Ontario; I haven't met very many.

It just simply doesn't go far enough. It doesn't bring it back to where it should be. Oddly enough, I agree with a lot of what the Canadian Federation of Independent Business said. I was sitting here, thinking—we were talking amongst ourselves, saying, "I can't believe I agree with them." I think where we might part company is that we still think it should be brought back into the public sector, and then you'd have absolute government control over all the regulations, all the enforcement, everything else, and a person, an employee, could actually go and shut a place down. They'd have that authority to come back to their bosses, make the recommendation and go and shut them down.

The charges out of that Sunrise inquiry—none were made under the TSSA that I could ever find; they were all made under other acts.

The Chair (Mr. David Oraziotti): Thank you. That's the time. We appreciate you coming in today, and we appreciate the presentation.

Mr. Smokey Thomas: Thank you very much.

CITY OF TORONTO

The Chair (Mr. David Oraziotti): Our next presentation is the city of Toronto. Members, there's just under 10 minutes for a vote upstairs. We'll start the presentation. To our presenter: We might need to stop the presentation, and then we will come back and ensure that you have adequate time to have a full presentation, but I just want to make a point of that before we begin.

Welcome to the Standing Committee on General Government. State your name, and you can begin your presentation.

Ms. Maria Augimeri: Thank you. My name is Maria Augimeri. I'm a city councillor. I represent the ward in Downsview where the Sunrise Propane explosion occurred. Thank you for allowing me to come and speak on behalf of my community on this bill.

As you know, many of my constituents were forced out of their homes; 12,000 were evacuated that day, and over a year later, some have yet to return. This bill is a step toward what we need, but it doesn't go far enough. The TSSA still remains at arm's length and it still lacks the accountability and transparency we've cried out for. It doesn't provide a safety net for communities like mine.

The TSSA, in its current structure, does not work. Giving power to the industry that it controls doesn't focus exclusively on regulation and safety. We saw that in the November 2004 incident with a propane fire explosion in Bowmanville, which evacuated hundreds of residents and closed the 401 due to the landing of debris; and in the recent propane explosion at Murray Road on August 10, 2008, which not only closed the 401 but left many families to rebuild their homes.

The consequent audit by the TSSA in April 2009 resulted in the finding that of the 2,790 facilities that were audited, only 603 sites—that's 21%—were compliant. What about the other 79%? About half of these, 1,335, were not even in operation, and 30 sites were found to have immediate hazards, all under the authority of the TSSA. This clearly indicated that significant and far-reaching measures must be taken, and bringing the TSSA under full government control should be the obvious option.

Bringing the TSSA back in-house, giving the ministry—any ministry—proper control would be taken as handing safety back to the residents and away from private interests, whose number one concern is ensuring a wide profit margin. This is what we want the government of Ontario to provide to its citizens.

Furthermore, Bill 187 does not permit local municipalities to govern the types of uses in industrial areas and does not permit municipalities to limit these uses when incompatible with nearby residential areas. In the mid-1990s, the provincial government defeated the old city of York and the city of Toronto on bylaws that would have allowed both municipalities to regulate propane storage located near residential communities. We want to do this.

This past summer, my office canvassed the community immediately adjacent to the explosion with a petition to bring the TSSA back in-house. Mr. Tabuns presented the petitions to the Legislature earlier today. The Downsview community is united on this front. To see to it that this devastation does not recur, we want and demand adequate oversight of the TSSA. I've brought copies of the petitions with me—they're here—over 700 signatures from residents who want greater accountability and transparency when it comes to safety inspections. Keeping the TSSA as a private entity does not achieve that goal.

The Chair (Mr. David Oraziotti): Thank you very much for your time. We can start the questions with—

Mrs. Linda Jeffrey: Just take a break.

The Chair (Mr. David Oraziotti): Take a break? Okay. Mr. Tabuns?

Mr. Peter Tabuns: Before you break, just to the government party: There are three votes on this side. If you send three up for the vote, can we not continue?

Mr. Bill Mauro: I think we should all just go and come back.

Mr. Peter Tabuns: Fine, okay. It's just an offer.

The Chair (Mr. David Oraziotti): I think it's to give all members the opportunity to go upstairs. The committee is in recess. I'd ask members to come back as soon as the vote is over.

The committee recessed from 1643 to 1651.

The Chair (Mr. David Oraziotti): Okay, let's pick up where we left off, which was questions in the time remaining of your presentation. We have about nine minutes or so. Mr. Mauro will start.

Mr. Bill Mauro: Thank you for your presentation, and thank you for coming today. As a former municipal councillor myself, and I think many of us here are, we can certainly appreciate your position.

I wonder if I could hear your thoughts on the position of chief risk and safety officer that's established in the legislation, and the authority that position will have, should the legislation pass.

Ms. Maria Augimeri: The chief—

Mr. Bill Mauro: Risk and safety officer.

Ms. Maria Augimeri: I'm sorry; I can't comment on that.

Mr. Bill Mauro: Are you aware that the legislation, if passed, will establish a chief risk and safety officer?

Ms. Maria Augimeri: Yes, I read it, but I don't have enough expertise to comment on that.

Mr. Bill Mauro: No problem. Thank you.

The other question I would ask is that part of the response to the explosion was what was called the propane safety review. That review brought forward, as I understand it, 40 recommendations; 33 have already been implemented; two are legislative and are contained within the legislation—that will bring it to 35—and the others require a response from other jurisdictions. I'm told that the names of the people conducting the review are Birk and Katz, and it was actually quite extensive. As I said, most of what they've recommended has already been done, with the rest still to be done.

One of the things they're saying, in terms of safety, is that the TSSA and their staff themselves will have this enhanced level of authority that they can use. As it has been explained to me, should they identify safety concerns and safety risks, they can actually go in there and shut it down themselves. I wonder if you could talk to us about that.

Ms. Maria Augimeri: Yes, I have a very healthy respect for the panel members, and when I deputed before them, I found them to be quite knowledgeable and sensitive—I went with members of my community. I was very pleased in reading over the recommendations; however, the one obvious absence in their final argument was that they didn't recommend that the TSSA be taken back in-house. I went before them with seven recommendations; all of them were adopted and included in their final report. I was very happy with that, but this one wasn't. I understand why the other one about the municipality having the right to have oversight over the

amount of propane on a site when it's near a residential community is not in this particular bill. But this other piece that is glaringly omitted, which speaks to me of Walkerton and of all public safety, I think is an egregious error. It's the only thing they didn't do that I have terrible problems with and that my community has problems with; that is, taking it back in-house.

The Chair (Mr. David Oraziotti): Ms. Munro.

Mrs. Julia Munro: Since this bill doesn't contemplate that at this point—and I understand your concerns—I'm just wondering if there are particular areas of the bill that you would wish to see strengthened in light of the nature of the bill we have before us.

Ms. Maria Augimeri: Yes. I've looked at that, and the recommendations that I made before the panel, such as, for example—it's laughable but still serious—that propane handlers could, in the past, have been able to obtain their licences through the Internet, and things of that nature—that has been strengthened. The overview has been strengthened, and, I understand, the portion about the safety audits has been strengthened—all of that. So, to answer your question, no, I think that we're quite satisfied with the bulk of it.

However, this is a glaring oversight. I don't believe, and my community doesn't believe, on the whole, that when it comes to matters of public safety, industry ought to be able to govern itself. It doesn't make sense. And we've seen it happen over and over again here.

Mrs. Julia Munro: Thank you very much.

The Chair (Mr. David Oraziotti): Any further questions, Ms. Munro?

Mrs. Julia Munro: No, that's it.

The Chair (Mr. David Oraziotti): Okay. Mr. Tabuns, questions?

Mr. Peter Tabuns: Yes. Maria, thank you very much for coming in today and making your presentation. Could you talk a bit about the human-impact side of what happened to your community with the Sunrise Propane explosion?

Ms. Maria Augimeri: I think you've all read in the papers how many have been impacted, but there is one street that no one talked about, and that's Frederick Tisdale Circle. The majority of women who live on that street—it's a different community from the rest. They live on the military base, which is now known as Downsview Park. Their husbands are in Afghanistan. They had a whole other series of challenges to meet on that woeful day. They thought that we were being attacked. They thought that we were at war. Those were the people who were taken to hospital by ambulance. When you read about those reports in the paper, it wasn't the rest of the community: It's that one street.

The psychological trauma that those women and their children had to go through will not end. That will stay with them. I think that's the street that people forgot. Some of the women who ventured out afterwards—and it was very difficult for them to venture out—couldn't speak for a long time.

Their houses are now being torn down by the federal government because they need to make way for other housing. Some of the housing was too much in a state of disrepair to be built up again. So they have to start from scratch.

There are many casualties of that explosion that people don't know about, such as that particular one.

Mr. Peter Tabuns: Thank you.

The Chair (Mr. David Oraziotti): Thanks very much for coming in today. That concludes the time for your presentation.

COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

The Chair (Mr. David Oraziotti): Our next presentation is the Communications, Energy and Paperworkers Union of Canada. Good afternoon. Welcome to the Standing Committee on General Government. You have 15 minutes for your presentation. Any time that you don't use, we'll allocate to the members for questions. So if you'd state your name, you can begin your presentation.

Mr. Kim Ginter: My name is Kim Ginter. I'm administrative vice-president of the Communications, Energy and Paperworkers Union. With me is Josephine Petcher. She's national rep.

CEP would like to thank the committee for this opportunity to comment on Bill 187, a bill regarding the Technical Standards and Safety Authority.

The Communications, Energy and Paperworkers Union of Canada was formed in November 1992 by a merger of three major Canadian unions with locals from coast to coast. CEP represents 150,000 workers across Canada. With approximately 50,000 women and men and almost 500 bargaining units, we are one of the largest private sector unions in Ontario. We represent over 5,000 members whose work falls under the TSSA.

Public and worker safety is of vital importance to us, and we welcome this opportunity to comment. We will address our issues with the bill as proposed, and close our comments with CEP's position on how public safety can better be protected.

The TSSA, which was set up by the Harris government to replace government regulatory activity in such important areas of safety risk as natural gas and petroleum, propane fuels and equipment, boilers, elevators etc., is a self-funded private company which falls under none of the laws which normally oversee a government agency's functioning and hold it accountable. The majority of the representatives on the board of the TSSA come from the very industries that they are supposed to be monitoring. The CEP believes that this places the authority in an immediate conflict of interest with the public it is supposed to protect.

1700

Unlike the private sector, governmental agencies are accountable to the public for the success and failure of their regulatory functions through oversight by the

provincial Auditor General, the Ombudsman, and the public entitlement to freedom of information. The government, of course, is accountable to the electorate. Unlike private sector bodies, government agencies and branches are often required to have multiple-stakeholder input into areas impacting on the public domain.

The government's proposed amendments concerning the TSSA in Bill 187 do virtually nothing to change the TSSA's lack of accountability and in fact seem more concerned with shielding the crown from any liabilities relating to the TSSA. The bill reiterates in great detail that the TSSA is a corporation—section 3.1 of Bill 187—that the corporation and its directors, employees etc. are not agents of the crown—subsection 3.3(1)—and that the crown is not liable for any actions or omissions of persons who are not agents of the crown—subsection 3.17(3).

It is the position of the CEP that the status of the TSSA as a private corporation increases risk to public and worker safety, which can only be reduced by bringing back the functions and responsibilities of the TSSA to public sector control and accountability. With the minor tinkering contained in Bill 187, the government is losing an opportunity to address underlying systemic issues that may have led to the Sunrise Propane explosion.

Inadequacy of Bill 187 to address safety concerns: What we've been hearing from our members on the ground is that since the TSSA was created, inspections in the industries falling under its mandate have greatly dropped. Because the TSSA is self-funded, it has to charge equipment owners and whistleblowers for carrying out investigations. If an employee calls the TSSA to report a safety risk, our members report to us that the main thing the TSSA asks is, "Who is going to pay for an inspection?" If the employer hasn't agreed to pick up the bill, the TSSA often won't do an inspection, although the safety threat hasn't changed. Bill 187 contains no amendments that would obligate the authority to increase its inspections.

Our members report that if they're lucky enough to get the TSSA to do an inspection, the TSSA usually sides with the employer. This should be no surprise, as the board of the TSSA is made up of industry representatives.

Bill 187 would allow the minister to alter the number of directors on the board of the TSSA and determine competency requirements—section 3.7. However, there is no requirement that the board reflect a broader range of stakeholder interests. The board can remain as industry-dominated as it was before. We would still be in a situation where the fox is looking after the henhouse.

Industry interests have inappropriate influence in other areas as well. The current administration agreement between the government and the TSSA requires the government to consult with the TSSA in making legislation or policy that relates to the industries that fall under the TSSA. Since the TSSA is made up largely of industry representatives, this means that industry interests have the dominant input into setting the health and safety

standards that affect the public and workers. Bill 187 expressly continues this existing administration agreement—subsection 3.15(3). This means that vested interests are determining public policy.

Another area of great concern to our CEP members is that the TSSA regularly grants variances from safety and environmental regulations to industry, allowing the use of equipment and practices that are considered to be a safety risk. For example, many construction companies etc. are given exemptions from having to predetermine where underground gas and water pipes are. As a result, there can be a lot of accidents when digging starts. We've had members killed from trying to patch up and fix broken gas pipes. This also places local residents at risk.

Another example of risky decision-making by the TSSA is that many owners and employers of everything from manufacturing plants to hospitals to schools successfully lobby the TSSA to get some of their boilers taken off line so that they can reduce their rating, and then reduce their staff or use less-qualified technicians, putting a bigger burden on the remaining boilers. Using underqualified technicians puts public safety at risk.

Unlike the government, the TSSA is under no obligation to give the public any notice of these variances, and there are very limited rights of appeal against these variances. Affected employees are not told when or why these exceptions were granted. The Propane Safety Review panel report of November 2008 criticizes the TSSA's practice in granting variances and recommends that the TSSA must "make clear to ... public safety authorities and other stakeholders the reason for the proposed variance." Bill 187 does nothing to implement this recommendation in any way.

Bill 187 does create a chief safety and risk officer to independently review the TSSA's activities, but as the officer is to be appointed by the TSSA, it is hard to imagine how the officer would be independent; that's section 3.11. Further, under Bill 187, this officer is not obligated to do anything following a review, but "may" prepare a report. If the officer does prepare a report, there are no provisions obligating the TSSA to implement any of the officer's recommendations.

Three other changes which also effectively continue the status quo include section 3.21, which states that the minister "may" consult with the TSSA and require the performance of various reviews; section 3.22, which states that the Auditor General "may" audit the TSSA; and section 3.23, which states that the minister "may" appoint an administrator to assume control of the TSSA if the minister believes it is in the public interest to do so.

As currently drafted, it would appear as if these various discretionary powers would be exercised as an exception and not the rule. As we've seen from the results of the inspection blitz after the Sunrise Propane explosion, which found many propane plants to be non-compliant with current safety standards, the TSSA has simply not been adequately monitoring and identifying hazards in Ontario.

Although the government claims that the amendments in Bill 187 will improve public safety, the bill, as drafted,

actually does nothing to strengthen the present inspection and enforcement functions of the TSSA. Bill 187 does grant inspectors the power to order a party to take measures to reduce imminent hazards—section 6—but this power is useless if you don't have sufficient inspectors to identify hazards or if your inspectors tend to side with the employer.

The CEP has been lobbying the government for years to bring the work of the TSSA back under government control and responsibility, most recently in a lengthy letter we sent to the Premier in December 2008 in support of an opposition motion to make the TSSA a government agency. Bill 187 does not do anything to increase the accountability of the TSSA or to decrease risks to the public and employees from these high-risk industries. It is the CEP's position that bringing back the functions of the TSSA to the public sector would much better address public safety concerns than Bill 187 as it is presently drafted.

This concludes our comments. CEP thanks the committee for this opportunity to comment on Bill 187, the TSSA amendment act, 2009. I submit this on behalf of Bob Huget, vice-president; myself, administrative vice-president; and Barb Dolan, administrative vice-president of CEP. Thank you.

The Chair (Mr. David Oraziotti): Thank you, Mr. Ginter. We have a very brief time for questions, but we'll try to get around to all members. Ms. Munro, quickly if you can.

Mrs. Julia Munro: Two quick things. First of all, I want to thank you for the depth of analysis of this presentation. I think it's very, very helpful for us as committee members.

My second quick question—well, first question: Is there training for propane handling available easily within the province? Where do people go to school to learn about—

Ms. Josephine Petcher: I'm not familiar with that. I'm sorry.

Mrs. Julia Munro: I just wondered if, in your work, you were aware of any kind of opportunity.

Ms. Josephine Petcher: Our workers are working less in propane than in other areas like natural gas and petroleum and dealing with boilers.

Mrs. Julia Munro: Okay. I appreciate that.

The Chair (Mr. David Oraziotti): Mr. Tabuns, go ahead.

Mr. Peter Tabuns: Kim, thank you for the presentation. You noted that some of your members have called TSSA to report unsafe conditions and have been told, in effect, "Unless someone's paying for this inspection, we're not going out there." How do they deal with that? How do they respond?

Ms. Josephine Petcher: The inspections are simply not done. That's the concern. I think that was also noted in the propane safety review report. There was, I think, a bit of an issue that if there is no method of funding, the inspections are going to be unlikely to be done. It's not addressed whatsoever in Bill 187. There's no provision

for funding of the TSSA; they are completely self-funded. So if someone isn't going to pay for it—and we find that employers are often not volunteering to pay for inspections and to look for safety failings—they are simply not done. There's no appeal mechanism. There's nothing we can do about that.

Mr. Peter Tabuns: Okay. Thank you.

The Chair (Mr. David Oraziotti): Mr. Mauro.

Mr. Bill Mauro: Kim, good to see you again as well. The last time was Atikokan, I believe—

Mr. Kim Ginter: Yes. Thank you, sir.

Mr. Bill Mauro: —an announcement up there, and it's moving forward, I think. It all looks pretty good.

I have just one question, as we have very little time. Short of bringing the TSSA back within control of the government, if that is not going to happen, what would you hope would be the one or a few significant changes or amendments that could be brought forward to the legislation that would enhance or provide you with a better level of comfort, I guess, if I could use that word, with the legislation?

Mr. Kim Ginter: I'll leave those answers to my colleague.

Ms. Josephine Petcher: If at this time it would not be possible to bring it back to the public sector, the

government wouldn't contemplate it, then if it could be brought under the same formal accountability framework that the public sector agencies or bodies would be subject to: the Ombudsman Act, freedom of information, Lobbyists Registration Act etc., to have strong conflict-of-interest guidelines and rules—not guidelines, actually; to have them be mandatory—and to have some sort of provision for funding. I think that if inspections and enforcement are not funded, it's not going to be done.

Mr. Bill Mauro: Thank you.

The Chair (Mr. David Oraziotti): Thanks for coming in today. We appreciate your presentation. That's the time we have.

Mr. Kim Ginter: Thank you.

The Chair (Mr. David Oraziotti): Just one last item, committee members, before we adjourn for the day. I'd just remind members of subcommittee report item number 8, that, pursuant to the order of the House, amendments are to be filed with the clerk by noon on Friday, November 27. Any amendments that are after that time on that day will not be accepted.

Thank you. Committee is adjourned.

The committee adjourned at 1714.

CONTENTS

Wednesday 25 November 2009

Subcommittee report	G-1185
Technical Standards and Safety Statute Law Amendment Act, 2009, Bill 187, <i>Mr. McMeekin / Loi de 2009 modifiant des lois en ce qui a trait aux normes techniques et à la sécurité</i>, projet de loi 187, <i>M. McMeekin</i>	G-1185
Canadian Federation of Independent Business	G-1185
Mr. Satinder Shera	
Ms. Angela Cloutier	
Ontario Public Service Employees Union	G-1188
Mr. Smokey Thomas	
City of Toronto.....	G-1191
Ms. Maria Augimeri	
Communications, Energy and Paperworkers Union of Canada.....	G-1193
Mr. Kim Ginter	
Ms. Josephine Petcher	

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziotti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. Reza Moridi (Richmond Hill L)

Mr. David Oraziotti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mr. Bob Delaney (Mississauga–Streetsville L)

Mrs. Linda Jeffrey (Brampton–Springdale L)

Mrs. Julia Munro (York–Simcoe PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Mr. Andrew McNaught, research officer,
Legislative Research Service

1011
XC16
G23

Government
Publications

G-50



G-50

ISSN 1180-5218

Legislative Assembly of Ontario

First Session, 39th Parliament

Assemblée législative de l'Ontario

Première session, 39^e législature

Official Report of Debates (Hansard)

Monday 30 November 2009

Journal des débats (Hansard)

Lundi 30 novembre 2009

Standing Committee on General Government

Technical Standards and Safety
Statute Law Amendment Act,
2009

Comité permanent des affaires gouvernementales

Loi de 2009 modifiant des lois
en ce qui a trait aux normes
techniques et à la sécurité



Chair: David Oraziotti
Clerk: Trevor Day

Président : David Oraziotti
Greffier : Trevor Day

Hansard on the Internet

Hansard and other documents of the Legislative Assembly can be on your personal computer within hours after each sitting. The address is:

<http://www.ontla.on.ca/>

Index inquiries

Reference to a cumulative index of previous issues may be obtained by calling the Hansard Reporting Service indexing staff at 416-325-7410 or 325-3708.

Le Journal des débats sur Internet

L'adresse pour faire paraître sur votre ordinateur personnel le Journal et d'autres documents de l'Assemblée législative en quelques heures seulement après la séance est :

Renseignements sur l'index

Adressez vos questions portant sur des numéros précédents du Journal des débats au personnel de l'index, qui vous fourniront des références aux pages dans l'index cumulatif, en composant le 416-325-7410 ou le 325-3708.

Hansard Reporting and Interpretation Services
Room 500, West Wing, Legislative Building
111 Wellesley Street West, Queen's Park
Toronto ON M7A 1A2
Telephone 416-325-7400; fax 416-325-7430
Published by the Legislative Assembly of Ontario



Service du Journal des débats et d'interprétation
Salle 500, aile ouest, Édifice du Parlement
111, rue Wellesley ouest, Queen's Park
Toronto ON M7A 1A2
Téléphone, 416-325-7400; télécopieur, 416-325-7430
Publié par l'Assemblée législative de l'Ontario

LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON
GENERAL GOVERNMENTCOMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES

Monday 30 November 2009

Lundi 30 novembre 2009

*The committee met at 1437 in room 151.*TECHNICAL STANDARDS AND SAFETY
STATUTE LAW AMENDMENT ACT, 2009LOI DE 2009 MODIFIANT DES LOIS
EN CE QUI A TRAIT AUX NORMES
TECHNIQUES ET À LA SÉCURITÉ

Consideration of Bill 187, An Act to amend the Technical Standards and Safety Act, 2000 and the Safety and Consumer Statutes Administration Act, 1996 / Projet de loi 187, Loi modifiant la Loi de 2000 sur les normes techniques et la sécurité et la Loi de 1996 sur l'application de certaines lois traitant de sécurité et de services aux consommateurs.

The Chair (Mr. David Oraziotti): Good afternoon, everyone. Welcome to the Standing Committee on General Government to consider clause-by-clause for Bill 187.

We have seven proposed amendments. The first amendment, item number 1 here, has been put forward by the NDP, Mr. Tabuns.

Before we get to that—that's in section 2—there are no amendments in section 1. So I'm just going to ask committee: shall section 1 carry? All in favour? Opposed? It's carried.

Section 2: Mr. Tabuns, the first item is yours.

Mr. Peter Tabuns: I move that sections 3.1 to 3.24 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be struck out and the following substituted:

“Revocation of letters patent

“3.1 The letters patent and supplementary letters patent of the Technical Standards and Safety Authority are revoked.

“Transfer to Ministry of Consumer Services

“3.2 All powers, duties, functions and responsibilities that could be exercised or performed by the Technical Standards and Safety Authority before the revocation of its letters patent under section 3.1 are transferred and assigned to the Ministry of Consumer Services.”

Very simply, we had arguments from the CFIB; Communications, Energy and Paperworkers; the Ontario Public Service Employees Union, and although all of them were good, the CFIB was quite correct in its argument. Whether we pass this responsibility on to another body or not, in the end, government is held responsible

for enforcement of safety regulations, and to hand it off to an agency that is conflicted at its central purpose doesn't help us and doesn't protect the safety of people in this province. So I move a return of these functions to the hands of government.

The Chair (Mr. David Oraziotti): Mr. Mauro, response?

Mr. Bill Mauro: The government won't be supporting this motion. We don't feel it advances the goals of the legislation. We continue to have confidence in the TSSA. We think it's important to remind people that the expert propane safety review panel that provided a significant report and recommendations made 40 recommendations, 33 of which have been implemented, two of which are contained in this legislation, and only five remaining, which are the purview of other jurisdictions. For those reasons, we won't be supporting the motion.

The Chair (Mr. David Oraziotti): Any further comments?

Mr. Peter Tabuns: Recorded vote.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mauro, Moridi.

The Chair (Mr. David Oraziotti): That motion is lost.

The next motion is yours as well, Mr. Tabuns. Go ahead.

Mr. Peter Tabuns: I move that section 3.6 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be amended by adding the following paragraph:

“2.1 To carry out without charge inspections of unsafe conditions at the request of any affected person.”

It seemed to be fairly clear from presentations made to us that people who saw unsafe conditions and reported them were being pressed on the whole question of who's going to pay for that inspection. I think it needs to be made very clear in the objects of this corporation that inspections of unsafe conditions should happen notwithstanding the ability of a complainant or an operator to comply with payment for that inspection. I would say

that the correction of that problem is a significant one and should be incorporated into this act.

The Chair (Mr. David Oraziotti): Any further comments? Mr. Mauro, go ahead.

Mr. Bill Mauro: We won't be supporting the motion. Mr. Tabuns is referring, I think, to some concern around whistle-blowers, and we believe that protection for them can be included in the TSSA memorandum of understanding. It's also important to remind people that we believe that workers have a right to refuse unsafe work as part of the Occupational Health and Safety Act as it exists already today, which would trigger a Ministry of Labour response, as well as just the TSSA response. So, for those reasons, we won't be supporting the motion.

Mr. Peter Tabuns: Recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost. Mr. Tabuns, number 3 is yours.

Mr. Peter Tabuns: I move that section 3.6 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be amended by adding the following paragraph:

"3.1 To implement around hazardous facilities safety zones that conform at least with the standards of the American Environmental Protection Agency."

An issue that comes up in discussion with Maria Augimeri and with people who represent areas that are home to any sort of industry that could have an explosive effect on a community is a request for standards for exclusion or safety zones.

I noted in reading the propane safety panel review that our standards are not as high as those set by the American Environmental Protection Agency, and this amendment is meant to correct that problem.

The Chair (Mr. David Oraziotti): Mr. Mauro, go ahead.

Mr. Bill Mauro: We won't be supporting the motion. Under propane regulations from December 2008, the American Environmental Protection Agency standards can be used now to calculate a safe distance already. It's important to note as well that we believe that each location as it exists currently has and can implement safety management plans in conjunction with their fire departments and their local municipalities in conjunction with a variety of players. So that authority already exists.

In addition to that, the TSSA currently has the ability to revoke the licence of an operating establishment should they feel that it's operating in an unsafe manner and, by doing so, would fundamentally shut the building down.

The Chair (Mr. David Oraziotti): Any further comment?

Mr. Peter Tabuns: I'll just say that what is in place at the moment is not adequate and, thus, I want my amendment to go forward. There being no further debate, I'd call for a recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for on NDP motion 3.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Oraziotti): The motion is lost. Mr. Tabuns, number 4 is yours.

Mr. Peter Tabuns: I move that section 3.6 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be amended by adding the following paragraph:

"4.1 To provide notice and full reasons to the public, safety authorities and other stakeholders of any variance from requirements aimed at protecting public safety and the environment."

Following on what we've heard that the TSSA has the ability to provide variance for regulations and, frankly, those who may well be impacted by those variances should be aware of them and should have an opportunity to speak to them: Right now, that is not the case. This makes people aware of the situation and at least gives them a start on objecting where they feel an action has been taken that doesn't properly protect public interest.

The Chair (Mr. David Oraziotti): Mr. Mauro?

Mr. Bill Mauro: We won't be supporting the motion. We find the language in it around "informing the public" too vague to be appropriate for the legislation.

As far as notifying the public, that's part of the TSSA's mandate currently. The authority to do it is based on risk already as exists; often a call to a fire marshal, local authorities and even, if necessary, to Emergency Management Ontario, is already there and available. So for those reasons, we won't be supporting it.

Mr. Peter Tabuns: A recorded vote.

The Chair (Mr. David Oraziotti): A recorded vote has been called for motion 4.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi, Munro.

The Chair (Mr. David Oraziotti): The motion is lost. NDP motion 5: Mr. Tabuns.

Mr. Peter Tabuns: Five is the lucky number.

I move that section 3.11 of the Technical Standards and Safety Act, 2000, as set out in section 2 of the bill, be struck out and the following substituted:

“Chief safety and risk officer

“3.11(1) The minister shall appoint a chief safety and risk officer who shall be paid out of funds appropriated by the Legislature for that purpose.

“Independent review of corporation’s activities

“(2) The chief safety and risk officer shall independently review the corporation’s activities or proposed activities related to the public safety responsibilities assigned to the corporation under this act and the regulations.

“Reports

“(3) The chief safety and risk officer may prepare a report on any matter related to the corporation’s activities or proposed activities referred to in subsection (2) if the officer considers it in the public interest to do so.

“Same

“(4) The chief safety and risk officer shall prepare an annual report and such other reports as may be requested by the minister.

“Publication of reports

“(5) Reports prepared by the chief safety and risk officer shall be made available to the public.”

Very simply, the initiative of having a chief safety and risk officer gives an appearance of an independent voice that will be able to challenge misguided or weak initiatives on the part of the TSSA itself. But in a situation where that person is dependent on the board of directors of that corporation for his or her income, his or her revenue, I don’t think that they have adequate independence. So even if you support the corporation and the continuance of the corporation in the form put forward in this legislation, it would make sense for this government and future ones to have an independent safety and risk officer who can monitor what’s going on there, reach into the organization, investigate and report back to the minister and hopefully, in those reports, to the public as well.

The Chair (Mr. David Oraziotti): Mr. Mauro?

Mr. Bill Mauro: The motion, we believe, would indicate government control over the TSSA, and that’s not the objective of this legislation. As well, already contained in the legislation is a level of enhanced accountability and transparency by giving the Auditor General full access to conduct value-for-money audits, something that was not there heretofore. The chief safety and risk officer will be required to report publicly on an annual basis, as is contained in the legislation.

The Chair (Mr. David Oraziotti): Mr. Tabuns: Further comment?

Mr. Peter Tabuns: Mr. Mauro’s words were interesting to me. I think that one can discern an attempt by the government to push its responsibilities for public safety away onto the shoulders of the TSSA. He may well be right. Any action to the contrary that shows deep government involvement in trying to protect the public would implicate the government in trying to protect the public. So I understand why the government is rejecting

this initiative, but I would say: Ultimately, the next time there’s a significant safety failure, the government will have a very great deal of difficulty accounting for why it didn’t take action that it could have when this matter was up for debate here.

No need to prolong debate; I’m ready for a recorded vote when debate has concluded.

The Chair (Mr. David Oraziotti): Any further comment? A recorded vote has been called for on NDP motion 5.

Ayes

Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi, Munro.

The Chair (Mr. David Oraziotti): The motion is lost. We now move to Conservative motion 6: Ms. Munro.

1450

Mrs. Julia Munro: I move that section 2 of the bill be amended by adding the following:

“Two-year review

“3.21.1(1) Two years after the Technical Standards and Safety Statute Law Amendment Act, 2009, receives royal assent, the minister shall ensure that a review is conducted of the performance, governance and activities of the corporation and that a report setting out the findings from the review is prepared.

“Review

“(2) The review conducted under subsection (1) shall include, but not be limited to, a review of the following:

“1. The mandate of the corporation.

“2. The costs and compliance impacts specifically affecting small business.

“3. The costs and fee structure for inspections under the act.

“4. The appeal processes from decisions under the act.

“5. Risk management practices.

“6. Efficacy of inspections under the act.

“7. Efficacy of government oversight of the corporation.

“8. Public notification of activities and decisions of the corporation.

“9. Independence of the chief safety and risk officer.

“10. Governance structure of the corporation and stakeholder activities of the corporation.

“Same

“(3) The review conducted under subsection (1) shall include extensive public consultations.

“Report

“(4) The minister shall deliver the report prepared under subsection (1) to the Speaker of the assembly, who shall lay the report before the assembly at the earliest reasonable opportunity.”

In putting together this motion for an amendment—it tries to reflect many of the areas that have been raised in

the public hearing process on frustrations or limitations or personal experiences that businesses have had, or the community at large have had, with the interaction with the Technical Standards and Safety Act. It seemed to me that putting forward a review was the best way to make sure that those items that have been addressed throughout the bill would have an opportunity, through a public process, to be reviewed.

I'll just go over the rationale briefly for the inclusion of these particular ideas.

The first one, on the mandate: We heard in the presentations last week, particularly from the CFIB, that the mandate has grown. The mandate is too broad, and it needs to be more clearly defined and restricted.

The question of costs and compliance impacts: We heard that small business has a number of specific issues in terms of this bill and in terms of the TSSA. One of them is that it's hard for individual small businesses to be able to take time from their own business to participate in the activities of the TSSA in terms of being representatives. It's much easier for a larger company. Again, the questions of fee structure and actual decisions that are made by the TSSA need to recognize that one size doesn't fit all. We have many sizes in this particular area.

The third: There was recognition that the question of the fee structure and the costs for inspections—we heard about how there is the danger of people feeling that no one would ever report anything because of the cost of inspections. We think that that needs to be addressed and we need to know, at the end of two years, that changes have been made. People then would have the opportunity to come back and look at and discuss these issues in a public process.

Several of the deputants the other day recognized that there's no appeal process, and so this simply recognizes that limitation and asks that this be included.

With risk management practices—again, a highly variable and difficult issue for people to understand and manage, but that doesn't mean that it shouldn't be dealt with.

The Communications, Energy and Paperworkers Union of Canada referred to the question of inspections and suggested that there had been a decrease in the number, and they also alluded to the fact that it had something to do with the fee system, which I mentioned.

The CFIB certainly talked about how the TSSA is not sufficiently accountable to government, and used the example of refrigerator regulation being imposed when there was absolutely no actual proof of the need.

Also, it's clear from the presentation made to us by the Toronto councillor that in the public's mind, it is the government that's responsible for public safety.

The question about public notification of activities and decisions of the corporation—are you the parliamentary assistant, Mr. Mauro?

Mr. Bill Mauro: I'm the sub.

Mrs. Julia Munro: Oh, okay. Sorry. But you did—

Mr. Bill Mauro: I am the—

Mrs. Julia Munro: Okay. I just wanted to make reference to a comment that you made in response to the earlier NDP motion about it being too vague with regard to the public role in presentation. This amendment would offer the government, obviously, the opportunity to essentially establish those parameters, which would speak to your concern that you suggested earlier about the particular amendment.

The question of the independence of the chief safety and risk officer: It was noted by the Communications, Energy and Paperworkers Union that they fear that the officer wouldn't be independent because he will be appointed by the TSSA board. In a review of the nature I am proposing, those fears would obviously be allayed.

Finally, the question of the governance structure of the corporation: Both the Communications, Energy and Paperworkers Union and the CFIB agree that there need to be changes made to the membership of the board to better represent their collective and diverse interests.

So, for those reasons, I'm suggesting that the government look at this particular amendment.

The Chair (Mr. David Orazietti): Mr. Mauro, go ahead.

Mr. Bill Mauro: We won't be supporting the motion.

Most of the comments were directed, I think it's fair to say, generally speaking, at issues of transparency and accountability.

Bill 187, for the first time, will include the ability for the TSSA to come under the purview of the Auditor General, to conduct a value-for-money audit. So I'm not sure what more might be expected to be done in that regard to increase the level of transparency and accountability to the public. As members here know, the Auditor General is an independent legislative officer who reports back to the Legislature, not to the government, and the inclusion of this piece in this legislation is extremely significant.

I should also mention that the risk and safety officer will be reporting publicly on risk challenges to the public at large on an annual basis.

For those reasons, we won't be supporting the motion.

The Chair (Mr. David Orazietti): Mrs. Munro, go ahead.

Mrs. Julia Munro: I just want to briefly comment—and I don't want to drag this out. The first issue that you raised about having the Auditor General able to be the vehicle for that transparency: There's a fairly narrow range of his abilities when we look at the mandate that he was given earlier by the government with regard to the eHealth materials. So I would just suggest to you that this particular group of ideas in the amendment that I've put forward is much broader than that which the Auditor General would normally be looking at.

1500

The Chair (Mr. David Orazietti): Mr. Mauro, any further comments? Seeing none, Conservative motion number 6: All those in favour?

Mrs. Julia Munro: Recorded vote.

Ayes

Munro, Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Orazietti): The motion is lost.

The last amendment that is proposed is NDP motion number 7. Mr. Tabuns, go ahead.

Mr. Peter Tabuns: I move that section 2 of the bill be amended by adding the following section to the Technical Standards and Safety Act, 2000:

“Application of certain acts

“Ombudsman Act

“3.22.1(1) The corporation is deemed to be a governmental organization for the purposes of the Ombudsman Act.

“Freedom of Information and Protection of Privacy Act

“(2) The corporation is deemed to be an institution for the purposes of the Freedom of Information and Protection of Privacy Act.”

Very simply, I think it's a good idea that the Auditor General have access to this corporation. I think that for the people of Ontario, it would make sense that the Ombudsman also have access and that citizens of this province, through freedom of information, would have access to the information that is available in the operation of this corporation.

The Chair (Mr. David Orazietti): Mr. Mauro?

Mr. Bill Mauro: I think, as the member knows, that it's somewhat similar in nature to the first NDP motion. As the member knows, FIPPA and the Ombudsman do not apply to the non-public sector. The effect of the motion would be to allow the Ombudsman and FIPPA access to what we see as a business organization, I guess it's fair to say.

Having said that, the enhanced accountability, as I said with the previous motion, will be there, we feel, as provided by the abilities given to the Auditor General under this legislation. For those reasons, we won't be supporting the motion.

The Chair (Mr. David Orazietti): Any further comments?

Mr. Peter Tabuns: Just a recorded vote.

The Chair (Mr. David Orazietti): Okay, when we get to that. Ms. Munro.

Mrs. Julia Munro: Yes. I just want to comment on the government's position with regard to the fact that it's not the kind of organization that would normally come under the Ombudsman or freedom of information. Just for the record, I point out that the money that the Auditor General would be evaluating is actually private money; it's not public money. I would just point out that, on the one hand, the Auditor General is stepping into a different realm, and this NDP motion simply contemplates allowing two other equally public figures, in terms of their reporting to the Legislature, the opportunity to do so as well.

The Chair (Mr. David Orazietti): Any further comments?

Ayes

Munro, Tabuns.

Nays

Jaczek, Kular, Mangat, Mauro, Moridi.

The Chair (Mr. David Orazietti): The motion is lost. That's section 2. Shall section 2 carry? All those in favour? Carried.

I guess we can do sections 3 through to 18, as there are no other amendments that are proposed. Shall sections 3 through and including section 18 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 187 carry?

Mr. Peter Tabuns: Recorded vote.

Ayes

Jaczek, Kular, Mangat, Mauro, Moridi.

Nays

Munro, Tabuns.

The Chair (Mr. David Orazietti): Okay, it's carried. Shall I report the bill to the House? Carried? Opposed? Okay, it's carried.

Thank you. That's it. Committee is adjourned.

The committee adjourned at 1505.

CONTENTS

Monday 30 November 2009

Technical Standards and Safety Statute Law Amendment Act, 2009, Bill 187, <i>Mr. McMeekin / Loi de 2009 modifiant des lois en ce qui a trait aux normes techniques et à la sécurité, projet de loi 187, M. McMeekin</i>.....	G-1197
---	---------------

STANDING COMMITTEE ON GENERAL GOVERNMENT

Chair / Président

Mr. David Oraziatti (Sault Ste. Marie L)

Vice-Chair / Vice-Présidente

Ms. Helena Jaczek (Oak Ridges–Markham L)

Ms. Helena Jaczek (Oak Ridges–Markham L)

Mr. Kuldip Kular (Bramalea–Gore–Malton L)

Mrs. Amrit Mangat (Mississauga–Brampton South / Mississauga–Brampton-Sud L)

Mr. Rosario Marchese (Trinity–Spadina ND)

Mr. Bill Mauro (Thunder Bay–Atikokan L)

Mr. Reza Moridi (Richmond Hill L)

Mr. David Oraziatti (Sault Ste. Marie L)

Mrs. Joyce Savoline (Burlington PC)

Mr. John Yakabuski (Renfrew–Nipissing–Pembroke PC)

Substitutions / Membres remplaçants

Mrs. Julia Munro (York–Simcoe PC)

Mr. Peter Tabuns (Toronto–Danforth ND)

Clerk / Greffier

Mr. Trevor Day

Staff / Personnel

Ms. Marie-France Lemoine, legislative counsel



3 1761 11467371 8

